

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

Case No. 2025-045530

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

And in the intervention application between:

**ECONOMIC FREEDOM FIGHTERS**

Applicant

and

**DEMOCRATIC ALLIANCE**

First Respondent

**MINISTER OF FINANCE**

Second Respondent

**COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE**

Third Respondent

**SPEAKER OF THE NATIONAL ASSEMBLY**

Fourth Respondent

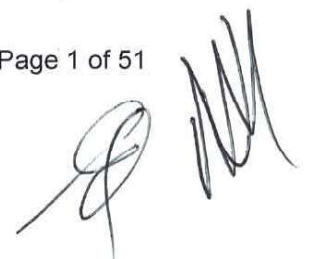
**CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**

Fifth Respondent

---

**ANSWERING AFFIDAVIT OF THE MINISTER OF FINANCE**

---

Two handwritten signatures in blue ink are located at the bottom right of the page. The first signature is a stylized, cursive 'R' or 'P' followed by a flourish. The second signature is a more complex, cursive signature with multiple loops and a long tail.

I, the undersigned,

**ENOCH GODONGWANA**

make oath and say that:

- 1 I am the Minister of Finance. I am cited as the first respondent in the main application brought by the Democratic Alliance (**DA**) and as the second respondent in the intervention application brought by the Economic Freedom Fighters (**EFF**).
- 2 The contents of this affidavit are within my personal knowledge or derived from official records and information under my control. They are true and correct to the best of my knowledge and belief. Where legal submissions are made, they are based on the advice of my legal representatives.

**OVERVIEW**

- 3 I note that both the DA and the EFF seek final relief in the form of the setting aside of resolutions by the National Assembly and the National Council of Provinces to accept the report of the Standing Committee on Finance and the Select Committee on Finance in respect of the 2025 Fiscal Framework. While I believe that this relief lacks merit, I will abide by the decision of this Court in relation thereto.
- 4 This affidavit is confined to opposing prayers 3 and 4 of the DA's notice of motion (Part A) in which they seek an order suspending my announcement, on 12 March 2025, to increase the VAT rate by 0.5% with effect from 1 May 2025 and by a further 0.5% with effect from 1 April 2026, as well as interim interdict preventing the South African Revenue Service (**SARS**) from implementing my decision.



5 In relation to the EFF:

5.1 I do not oppose the application to intervene.

5.2 Consistent with my approach to the relief sought by the DA, I abide by prayers 3 and 4 of the relief sought by the EFF.


5.3 Prayer 5 of the EFF's notice of motion is difficult to understand. It is unclear whether the EFF seeks merely to interdict the report (which so happens to make reference to a VAT rate increase) or whether the EFF seeks to interdict "the introduction of the 0.5 percentage points Value-Added Tax increase". That relief would be moot. The decision to introduce the VAT rate increase has been made. My decision to introduce the VAT rate change cannot be interdicted at this stage. I note that, unlike the DA, in their notice of motion, the EFF does not seek the suspension of my announcement. Neither is this addressed in their founding affidavit. However, to the extent that the EFF will seek such relief under prayer 5 of its notice of motion, and provided it is permissible to do so (which I deny), such relief is opposed.

6 It also appears that the EFF's submissions are premised on a view that my VAT rate announcement is unlawful because of the allegedly unlawful adoption of the fiscal framework (see paragraph 98). That view has no legal basis.

7 Section 7(4) of the VAT Act empowers the Minister of Finance to make a temporary VAT rate adjustment at the time of the national annual budget. I exercised that power on 12 March 2025. Even if one assumes the subsequent

adoption of the fiscal framework was flawed (a contention I dispute), that is unrelated to the lawfulness of my earlier announcement under section 7(4) of the VAT Act. The announcement continues to exist and has legal effect.

- 8 The fiscal framework is not legislation. Nor does it impose taxes. It is a parliamentary resolution that sets out revenue proposals, expenditure estimates, and related fiscal targets over the medium term. After it is adopted, the resolution's purpose is to govern proposed amendments to relevant money bills (see section 8(9) of the Money Bills Act). The adoption or amendment of the fiscal framework does not undo, change or retrospectively invalidate a statutory power that has already been exercised.
- 9 Indeed, in terms of the section 7(4) of the VAT Act, only an Act of Parliament can confirm (or change) my VAT-rate adjustment by passing the relevant Rates and Monetary Amounts and Amendment of Revenue Laws Bill into law (or amending it).
- 10 While this affidavit provides the basis on which I oppose the prayers for interim relief, including the ancillary relief of costs, I shall respond more fully to the relief sought in Part B of the notices of motion of both the DA and the EFF at the appropriate time.
- 11 In summary, the interim relief is opposed on, *inter alia*, the following grounds:
  - 11.1 The DA's challenge to section 7(4) of the Value-Added Tax Act 89 of 1991 (**VAT Act**) is misdirected. It advances two bases for the contention that section 7(4) of the VAT Act is unconstitutional. Both are bad in law.

Two handwritten signatures in black ink, one appearing to be 'J' and the other 'N'.



11.1.1 **First**, the DA submits that section 7(4) permits the Minister of Finance to amend section 7(1) of the VAT Act. This is plainly wrong. The provision does not confer on the Minister of Finance the power to amend section 7(1). Instead, it grants me temporary and conditional authority to adjust the rate for 12 months, subject to Parliament's power to enact legislation. When I, as the Minister of Finance, announce the alteration, section 7(1) remains the same and continues to exist until amended by Parliament. There is no legislative amendment.

11.1.2 In any event, the DA is mistaken to rely on a blanket proposition that legislation may never delegate such power to the executive. The Constitutional Court has held that assigning plenary legislative authority is not automatically unconstitutional. Rather, the enquiry into whether the power to amend statute is invalid is nuanced and entails the weighing up of a number of contextual factors. Rather than making out a nuanced and context-specific case, the DA has elected to rest its case on an incorrect blanket proposition

11.1.3 **Second**, the DA argues that even if section 7(4) is constitutionally valid, my decision is reviewable if I knew in advance that Parliament would not support the necessary legislative amendment. However:

11.1.3.1 I believe, as a matter of fact, that when the proposed amendment to section 7(1) is debated, a majority in



Parliament will support it as a responsible and necessary fiscal step. Thus, the factual premise for this attack is simply wrong;

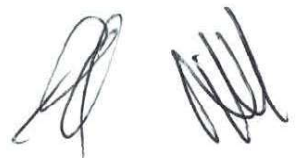
11.1.3.2 In any event, this is not a valid legal ground to challenge or set aside a decision made under a constitutionally authorised statutory provision. Section 7(4) expressly anticipates that Parliament may or may not adopt the proposed legislative amendment. The structure of the provision allows me to act and for Parliament to decide later whether to confirm or reject the rate change. That is the design of the law.

11.2 The DA has failed to meet the requisites for an interim interdict:

11.2.1 They have failed to demonstrate a *prima facie* right to the relief sought. They misinterpret section 7(4) of the VAT Act and, as a result, launched an ill-conceived constitutional challenge.

11.2.2 They have failed to establish a well-grounded fear of irreparable harm.

11.2.3 They have failed to demonstrate that the balance of convenience favours the grant of the interdict sought. Given the enormous public interest at stake, the balance of convenience favours the dismissal of the relief;



11.2.4 They have alternate remedies at their disposal, as demonstrated by the relief sought in Part B; and

11.2.5 The Court should exercise its discretion against the grant of the interdict.

## **THE SCHEME OF THIS AFFIDAVIT**

12 My affidavit proceeds as follows:

12.1 First, I explain the basis on which I announced a VAT rate increase.

12.2 Second, I explain why the DA's legal submissions are incorrect.

12.3 Third, I submit that the DA is not entitled to the interim relief it seeks.

12.4 Fourth, I explain that the EFF's affidavit is based on an incorrect conflation of the VAT rate increase and the fiscal framework and also submit that its allegations about the VAT rate increase are unsupported.

12.5 Fifth, I respond to the affidavits of the DA and the EFF *ad seriatim*, to the extent necessary.

## **THE SALIENT FACTS**

### **My announcement on 12 March 2025**

13 Section 7(1) of the Value-Added Tax Act 89 of 1991 (**VAT Act**) provides:

Two handwritten signatures in black ink, one appearing to be 'EF' and the other 'ND'.

"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 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."

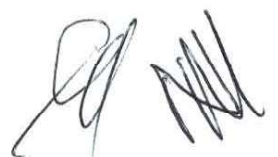
- 14 Section 7(1) must be read with section 7(4) of the VAT Act. The provision confers a power on the Minister of Finance to alter the VAT rate specified in section 7(1) by announcement during the national budget for a limited period, subject to Parliament enacting legislation within 12 months. The provision provides:

"If the Minister makes an announcement in the national annual budget contemplated in section 27(1) of the Public Finance Management, 1999 (Act 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."

- 15 I exercised this statutory power on 12 March 2025.

- 16 As part of the national annual budget as contemplated in section 27(1) of the Public Finance Management Act 1 of 1999 (PFMA), I announced the following to Parliament and the country:

**"Increasing the VAT rate**





The first 0.5 percentage point increase in the VAT rate will take effect on 1 May 2025 and the second 0.5 percentage point increase will take effect on 1 April 2026. In making this decision, government carefully considered the potential contributions of each of the main tax instruments. VAT is an efficient source of revenue. It is broad based, and its design is simple with minimal exceptions. Moreover, South Africa's VAT rate is still relatively low compared with peer countries".

- 17 The announcement is stated in the Budget Review, 2025, dated 12 March 2025.

The relevant extract is attached to the DA's founding affidavit as "DA1".

- 18 In my address to Parliament on that day, I explained the basis for my decision as follows:

"Honourable Members, we thoroughly examined alternatives to raising the VAT rate. We weighed up the policy trade-offs involved, including increases to corporate and personal income taxes.

Increasing corporate or personal income tax rates would generate less revenue, while potentially harming investment, job creation and economic growth.

Corporate tax collections have declined over the last few years, an indication of falling profits and a trading environment worsened by the logistics constraints and rising electricity costs.

Furthermore, South Africa's corporate income tax collections are already higher than most of our peer countries.

On the other hand, an increase to the personal income tax rate would reduce taxpayers' incentives to work and save.

Our top personal income tax rate and our personal income tax collections as a percentage of GDP are far higher than those of most developing countries. Increasing it is therefore not feasible.

Taking on additional debt to meet the spending pressures was also not feasible. The amount is simply too large. The cost of borrowing would be unaffordable. Our sub-investment credit rating would also make this level of borrowing costlier and put us at risk of even further downgrades.

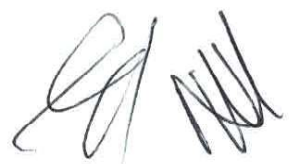
Madam Speaker, VAT is a tax that affects everyone. By opting for a marginal increase to VAT, its distributional effect and impact were cautiously considered.

The increase is also the most effective way to avoid further spending cuts and to enable us to extend the social wage.”

- 19 The announcement and my address to Parliament reflect the complex calculations, policy trade-offs, and polycentric balancing of various factors that the National Treasury — and ultimately, I, as Minister of Finance — must make to preserve fiscal stability and advance the public interest. Any decision reached is preceded by a thorough and extensive budget preparation process.

#### **The budget preparation process**

- 20 Section 6(1) of the PFMA sets out the functions and powers of the National Treasury. These includes coordination of the fiscal policy framework and management of the budget preparation process. The National Treasury also facilitates the implementation of the annual Division of Revenue Act amongst others.
- 21 SARS is required by section 12(1) of the PFMA to deposit into the National Revenue Fund all taxes, levies, duties, fees and other moneys collected by it for that Revenue Fund. It is funded through a transfer from National Treasury.
- 22 It is important to bear in mind that the National Revenue Fund is a reflection of the country's economic wellbeing as most of the revenue is collected from and generated by the country's economic production.
- 23 Since 2008/09, there has been a large and growing gap between government spending and tax revenues, resulting in exponential growth in borrowing to fund the fiscal gap. Over these years, the stock of government net loan debt has risen six-fold from under R500 billion in 2007/08 to nearly R3 trillion at the end of 2019/20.



- 24 The prevailing economic climate, which requires careful consideration around the management of public funds, has necessitated an increased focus on reprioritising existing government resources to areas where the most value can be derived for the benefit of all South Africans. To alleviate fiscal pressures, reductions have been effected on the baseline budgets of departments and public entities.
- 25 The division from the National Revenue Fund happens within a well-entrenched public finance management framework supported by public finance management legal framework and fiscal policy. All these happen in the context of prevailing macroeconomic policy and climate. In other words, there is a direct interrelationship between the National Revenue Fund, macro-economic climate, fiscal policy and division of national revenue through the mechanism of budgeting.
- 26 The budget determination process is consultative, complex and occurs at various levels within National Treasury and government and over an extended period. The division of revenue and budget process matches political priorities with available resources. The political priorities are determined by the national and provincial legislatures and are reflected in the National Development Plan, the Medium-Term Strategic Framework ("the MTSF") and the Budget Prioritisation Framework. The objectives of the Budget include achieving:
- **Fiscal sustainability:** spending, taxation and borrowing must support economic objectives and promote economic stability.
  - **Allocative efficiency:** resources allocation must reflect government's priorities on the basis of programme effectiveness.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.



- **Value for money:** Budget allocations must economically, efficiently and effectively enable delivery of quality, accessible public services.

- 27 Budget discussions take place within function groups. Function budgeting was introduced during the 2010 Budget as a mechanism to reflect government's "outcomes-based approach". Programmes and activities are grouped according to broad policy purposes or types of expenditure – functions. All government institutions that contribute to achieving a particular outcome are grouped in a function workgroup. Function groups comprise all national, provincial and local government institutions that contribute to achieving a particular outcome, such as health, education and housing.
- 28 Each "function" is given a budgetary envelope to work towards in considering the achievement of an outcome. Institutions negotiate among themselves on budgetary and policy issues (for example, on baseline assessments, allocations and key policy priorities and deliverables) to reach a common agreement on the work of the function. These negotiations and agreements are reflected in the budget submissions put forward by different institutions also based on the collective budget analysis of institutions. Function budgeting encourages collaboration between different institutions.
- 29 The process strives to improve the clustering of homogeneous or related functions to ensure that functional areas of responsibility are clearly demarcated to avoid ambiguity, or the overlapping or duplication of functions. Function groups are made up of various institutions across the three spheres of government, grouped together according to the objectives or activities they are mandated to perform. There are 7 function budget areas by national department (vote) and selected entities - General



Public Services, Learning and Culture, Health, Economic Development, Social Development, Peace and Security and Community Development.

- 30 All budget/narrative documents submitted to the National Treasury are considered in accordance with the following process:

30.1 The Public Finance division of the National Treasury considers the budget submissions of departments, engages departments and ultimately make recommendations to the Technical Committee on Budget (TCB). The TCB comprises of selected directors-general of national government departments and considers the inevitable trade-offs and priorities for government as a whole, and puts forward its Estimates of National Expenditure recommendations to the Ministers' Committee on the Budget (MINCOMBUD) considers the budgets of all functional groups (7 in all) and recommendations of the Public Finance division to determine how funds are to be distributed across departments, regard being had to the provincial and municipal equitable shares.

30.2 The MINCOMBUD is a committee of selected Cabinet Ministers appointed by the President and is chaired by the Minister of Finance, which considers the recommendations with due regard to the country's needs and concerns. The Committee may reduce or increase any budget item for final tabling before Cabinet for approval. This forms the basis for the fiscal framework, the division of revenue across the three spheres of government, and the detail of allocations tabled in the Medium-Term Budget Policy Statement and the Budget.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

- 31 During the budget preparation process existing government resources are reprioritised to areas where the most value can be derived for the benefit of all South Africans. Wide-ranging intergovernmental consultation on budgets in the provincial and local spheres of government are also undertaken.
- 32 The Division of Revenue Bill providing for the equitable shares for national, provincial and local government, and conditional allocations (grants) from national government's equitable share for provincial and local government, is one of the Bills tabled with national annual budget. The process for determining equitable shares and conditional grants to provinces and local government in the Division of Revenue Bill is a collaborative and consultative effort, both at technical and political levels. The equitable share allocation for provinces is determined in terms of a formula, which is updated annually with the latest available information, and approved by the Budget Council. Similarly, the local government equitable share is determined in terms of an approved formula and revised on an annual basis, taking into account variables such as household growth, poverty indices, and the costs associated with service delivery, and approved by the Budget Forum. Conditional grant allocations to provinces and local government, on the other hand, are determined in collaboration with national sector departments, which assess policy priorities, service delivery needs, and capacity at the provincial and municipal levels. The Heads of the relevant national departments responsible for administering the grants approve the conditional grant frameworks and allocations. The provincial and local government fiscal frameworks for the upcoming Budget are then submitted to Cabinet for approval, whereafter the Division of Revenue Bill, including annexures providing details on how allocations are determined, is then finalised for submission to Parliament.

- 33 Based on Cabinet's approval, the National Treasury prepares the Estimates of National Expenditure for the relevant year in respect of 42 national government votes and public entities.
- 34 The Estimates of National Expenditure publication describes in detail the planned spending in all national government votes over the MTEF period, which is government's three-year expenditure planning window. The Estimates of National Expenditure publication is tabled in Parliament by the Minister of Finance as part of the national annual budget which includes the proposed fiscal framework, the Division of Revenue Bill and the Appropriation Bill. The ENE publication serves as an explanatory memorandum to the Appropriation Bill. Through the Bill and the publication, the executive seeks Parliament's approval and adoption of its spending plans for the first year of the MTEF period.
- 35 Once the Appropriation Act has been assented to by the President and published in the Government Gazette, funds allocated for the first year of the new MTEF period are then appropriated from the National Revenue Fund. Parliament authorises expenditure annually, thus the spending estimates for the two outer years of the MTEF period are not included in the Appropriation Bill. These forward estimates or indicative allocations do, however, form the basis of the planning of the following year's budget.
- 36 From a policy perspective, as outlined in the 2025 Budget, the alternatives considered by the National Treasury in formulating the revenue proposals (including the VAT rate increases), represented potentially more detrimental outcomes in terms of economic growth and employment than the VAT proposals



- 37 For example, increasing personal income tax rates is likely to be inefficient in raising additional revenue as taxpayers make adjustments to reduce their tax liabilities. Higher personal income tax rates would also reduce the incentive to work and save, with potentially larger negative impacts on the economy. Over the past decade, several measures have already been implemented to raise personal income taxes. While these have increased the tax burden on individuals, the tax rate increases generated less revenue than expected. In addition, South Africa's personal income tax collection measured as a contribution to GDP, and the top marginal personal income tax rate of 45 percent, are far higher than those of most developing countries.
- 38 Increases in the corporate tax rate are likely to impede competitiveness while generating less revenue than VAT. Corporate taxes make a higher contribution as a percentage of GDP in South Africa than the Organisation for Economic Co-operation and Development and African averages. Of 123 reporting countries, South Africa ranks 13th for corporate tax as a share of GDP. These collections are also more volatile as they depend heavily on commodity price cycles and economic growth. Increasing the tax burden on companies can also influence employment and growth negatively as they can pass on the additional cost to employees – either by retrenching or limiting salary and wage increases; and they can pass on the cost to consumers by increasing the prices of products and services.
- 39 Suspension of the VAT rate increases would also alter the macroeconomic projections that underly the current fiscal framework. Revisions to these projections are a standard feature of the policy process; however, alternate tax

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.



proposals may have quite different implications for the distribution of growth and resulting economic growth outlook.

- 40 A delay in the increase in the VAT rate will leave a shortfall in terms of revenue, due to a mismatch between the expenditure and funding elements of the fiscal framework. The revenue shortfall would require higher borrowing in the short term to fund the additional expenditure that is included in the Budget. This would increase our debt-to-GDP ratio, leading to higher debt service costs that crowd out other expenditure.

### **Polycentric decision-making**

- 41 Decisions on whether or not to increase VAT require the balancing of three interdependent policy levers:

41.1 Tax Policy (Revenue): Ensuring sufficient tax collection through VAT, corporate tax, personal income tax, and other taxes to fund public services.

41.2 Spending Policy (Expenditure): Distributing limited public funds effectively to support government priorities, including infrastructure, healthcare, and education.

41.3 Debt Management: Managing public borrowing to address revenue shortfalls while maintaining debt at sustainable and prudent levels.

- 42 These levers are deeply interlinked. Adjusting one inevitably impacts the others, with consequences for economic performance and equity. Changes to any one



policy — such as increasing or deferring a VAT rate adjustment — affect the government's overall revenue. The choice between different revenue instruments (for example, VAT versus personal income- or corporate taxes) must be assessed not only in terms of the amount raised but also in terms of economic efficiency and fairness. Suspending a VAT increase, for example, requires either introducing a different tax measure or reducing government spending (or possibly seeking new debt). All choices have wide-ranging consequences, including impacts on employment, economic activity, and the distribution of public goods.

43 It bears emphasis that national legislation requires me to inform Parliament about all three fiscal levers — revenue, expenditure, and debt policies — when I present the annual budget speech. This underscores their interdependence. Any adjustment to one lever affects the others and must be considered holistically.

43.1 Section 27(3) of the PFMA requires that the annual budget tabled before the National Assembly include, among other things: (i) estimates of all revenue expected to be raised, (ii) estimates of current expenditure, and (iii) proposals for financing any anticipated deficit, including estimates of interest and debt-servicing costs.

43.2 In addition, section 7 of the Money Bills and Related Matters Act 9 of 2009 (**Money Bills Act**) requires that the Minister of Finance must table the national annual budget in the National Assembly at the same time as the Division of Revenue Bill and the Appropriation Bill, as contemplated in section 27 of the PFMA. The provision further provides that, alongside the information prescribed by section 27 of the PFMA, the documents accompanying the national annual budget must include, among other

things: (i) the proposed fiscal framework, (ii) the key macroeconomic assumptions underlying the fiscal framework over the short, medium, and long term; (iii) key fiscal ratios for the next three financial years, including revenue, expenditure, the primary and overall balance, and general government and public sector debt as a percentage of GDP; (iv) tax and other revenue proposals, including the projected contributions of different revenue categories to national revenue over the next three financial years; and (v) an estimate of aggregate general government and public sector debt levels over the short, medium, and long term.

- 44 In formulating the 2025 Budget, the National Treasury concluded — after assessing multiple scenarios — that a marginal increase in the VAT rate would be less damaging to growth and employment than alternative options, such as raising personal or corporate income tax rates. I support that assessment.
- 45 It was against this background of careful fiscal balancing and difficult but necessary trade-offs that I exercised my powers under section 7(4) of the VAT Act. That decision was not taken lightly. It reflects my best judgment, informed by the extensive expertise and analysis of the National Treasury and after having discussions with political parties represented in government, on how best to raise the revenue required to fund public goods such as education, healthcare, and social security programmes.
- 46 Since its announcement, the decision has been widely communicated across the country, and businesses and consumers alike have relied on it in planning for the financial year ahead.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.



47 The VAT rate is therefore set to increase to 15.5% on 1 May 2025.

#### **Implementation of the VAT decision**

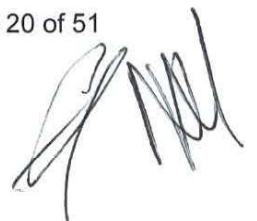
48 The process to pass the type of legislation contemplated in section 7(4) is already underway. On 12 March 2025, I published the Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill. A copy of the draft Bill is attached to the DA's founding affidavit as "DA4".

49 Clause 5 of the draft Bill proposes to amend section 7(1) of the VAT Act, thereby giving permanent legislative effect to the new VAT rate of 15.5%. For the above reasons, I view this as a prudent and necessary amendment. I also anticipate that a majority of Parliament will support it for the same reasons.

50 That said, the decision as to whether to give permanent effect to the VAT rate adjustment now lies with Parliament. In due course, Parliament will consider and debate the proposed legislation and, to the extent it sees fit, pass or amend it in accordance with the procedures set out in the Money Bills Act.

51 Furthermore, as indicated elsewhere in this affidavit, VAT is a transactional tax. In anticipation of the date on which the new VAT rate becomes effective, VAT vendors would have begun the process of notifying customers and clients of the new VAT rate and how it impacts the pricing of goods and services. They would also change their pricing systems in order to implement the change.

#### **THE DA'S CHALLENGE IS FUNDAMENTALLY FLAWED**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, located at the bottom right of the page.



52 The DA contends that section 7(4) of the VAT Act is unconstitutional for two reasons. I disagree with these submissions.

53 First, the DA submits that section 7(4) permits the Minister of Finance to amend section 7(1) of the VAT Act. It argues that such a power constitutes a plenary legislative function that Parliament may never delegate to the executive (see paragraph 18.10 of the DA's affidavit). The submission is unsupported.

53.1 The DA misreads section 7(4) of the VAT Act. Contrary to its contention, the provision does not confer on the Minister of Finance the power to amend section 7(1). Instead, it grants only a temporary and conditional authority to adjust the rate for 12 months, subject to Parliament's power to enact legislation. When the Minister of Finance announces the alteration, section 7(1) remains legally intact and continues to exist. There is no legislative amendment. Indeed, if no legislation is passed within 12 months, the temporary rate stops applying, and the application of the rate stated in section 7(1) resumes. If there were a legislative amendment, there would be no rate in section 7(1) to resume. This point is further illustrated by the fact that I have circulated a draft Bill to amend section 7(1). I would not need to seek an amendment of the provision if my announcement had the effect of amending the statute. In sum, the DA's allegation that section 7(4) vests a plenary legislative power in the executive rests on a fundamental misinterpretation of the text and purpose of section 7 of the VAT Act.

53.2 If, contrary to my primary submission, the Court were to find that section 7(4) of the VAT Act grants the Minister of Finance plenary legislative

powers, I am advised that the DA is mistaken to rely on a blanket proposition that legislation may never delegate such power to the executive.

53.2.1 I am advised that the Constitutional Court has held that assigning plenary legislative authority is not automatically unconstitutional. Rather, the enquiry into whether the power to amend statute is invalid “should be context-specific, and consideration should be given to the [i] scope of the delegation, [ii] the subject matter to which it relates, [iii] the degree of delegation and [iv] the sufficiency of the constraints on the exercise of the discretionary powers conferred by the section” (the *Nu Africa* judgment).

53.2.2 The DA has advanced no argument as to why the purported delegation of plenary legislative powers here would offend the Constitution based on the test outlined in *Nu Africa*. Its insistence on a categorical rule that any plenary delegation is *per se* unconstitutional is misconceived and fatal to its case.

54 Although the DA has not advanced this case, I nonetheless submit that even if section 7(4) were to be treated as conferring plenary legislative power, it would withstand constitutional scrutiny when assessed against the factors the Constitutional Court identified in the *Nu Africa* judgment. The analysis below is not exhaustive (given that I have been made to respond urgently to this application, and, in any event, this is not the DA’s pleaded case). I will respond more fully at the appropriate time if necessary.

A handwritten signature in black ink, appearing to be a stylized representation of the letters 'M' and 'A'.

54.1 **The limited scope of the delegation.** The delegation in section 7(4) is extremely narrow. It applies only to a single element of the tax system — the VAT rate — and only for a limited duration of up to 12 months. It may be exercised no more than once a year and only during the national annual budget presented to Parliament. This reflects its fiscal purpose: to ensure that sufficient revenue is immediately raised to support public spending and debt obligations in the year ahead. The provision does not allow the Minister of Finance to introduce new taxes, repeal existing statutes, or make structural changes to the tax regime. The power conferred is substantively and procedurally limited and falls well within the bounds of a constitutionally permissible delegation.

54.2 **The subject matter of the provision justifies the delegation.** The power of the Minister of Finance to temporarily adjust the VAT rate during the annual budget speech serves a crucial purpose. Section 7(4) enables the executive to address urgent budget pressures without permanently altering tax legislation, thus striking a balance between agile fiscal management and Parliament's ultimate authority. It is a critical tool for meeting immediate (or near immediate) spending and debt needs. To elaborate:

54.2.1 There is a necessity for swift executive action. Economic conditions can shift rapidly, and the money bill process can take months (sometimes nearly a year). If government had to wait for this process to unfold, the state's finances might deteriorate or the funding of core public services could be jeopardised. Section 7(4) offers a stopgap to this harm and a bridge to permanent



legislation: the executive may enact a temporary VAT rate adjustment pending Parliament's endorsement (or rejection).

54.2.2 There is ample precedent for expedited tax adjustments. Many statutory provisions empower the executive to change tax rates quickly, subject to Parliament's oversight and subsequent action. These types of provisions are necessary for sound fiscal administration and needed in a modern economy. Section 7(4) of the VAT Act should be viewed in this light.

54.2.3 The provision aims to maintain fiscal stability and public services. A short-term VAT rate adjustment stabilises revenue streams, allowing the government to fund essential services, like healthcare and education, and uphold debt obligations. Section 7(4) thus mitigates the risk of budget shortfalls that might severely impact the public.

54.2.4 The alternative scenario must be avoided. Without section 7(4), any change to the VAT rate would require a separate money bill. This would require a lengthy procedure involving committees, public participation, and multiple readings. Although that process is necessary and appropriate for major or lasting tax reforms, this process is ill-suited to meet urgent fiscal demands requiring immediate intervention.

54.2.5 In addition, it should be borne in mind that this delegation is made to the Minister of Finance, the executive member of national

government specifically charged with managing public finances, who exercises that power with the institutional backing and technical expertise of the National Treasury and SARS. In other words, the delegation is entrusted to a person and department with both the constitutional authority and the operational expertise to manage fiscal decisions of this nature. Indeed, this is precisely why the Constitution assigns a special role to the Minister of Finance in relation to money bills. This is another reason the delegation under section 7(4) is appropriate and constitutionally sound.

54.3 **The degree of delegation is extremely limited.** The power to adjust the VAT rate under section 7(4) is temporary and operates strictly within the framework of the annual budget process. It lapses automatically if Parliament does not pass legislation within 12 months, reinforcing the temporary nature of the delegation. The authority to establish a permanent VAT rate remains firmly with the legislature, as demonstrated by the proposed amendment to section 7(1) that I have already introduced through the draft Bill. This illustrates that Parliament must enact any lasting change to the VAT rate through the ordinary legislative process for passing money bills.

54.4 **There are sufficient constraints on the exercise of the power.** Section 7(4) is subject to clear and practical limits.

54.4.1 Any VAT adjustment made under the provision automatically lapses after 12 months unless Parliament passes legislation to

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of letters and a flourish.

make it permanent. Section 7(1) of the VAT Act remains in place, and the rate specified in the section retakes effect if no law is passed.

54.4.2 The statutory power can be used only once a year and only as part of the national budget process.

54.4.3 That process is one of our political calendar's most visible and closely scrutinised events. It is governed by the Constitution, the PFMA, and the Money Bills Act and includes detailed debates in Parliament, and public participation during the parliamentary process. Tax proposals are not quietly introduced, especially when something like an adjustment to the VAT rate is needed and proposed. They are debated openly by members of all political parties, with full media and public attention. The events surrounding this case illustrate that point. That political process is a real and important constraint on how the statutory power is used. It ensures that any decision made under section 7(4) is subject to public debate, political accountability, and parliamentary oversight.

55 Second, the DA argues that section 7(4) is unconstitutional because it allegedly allows the Minister to impose an irreversible tax. It contends that only elected representatives may raise taxes, and that any delegation of this function to a member of the executive is impermissible (see paragraph 18.11 of the DA's founding affidavit). This blanket proposition is legally incorrect and should be rejected on that basis alone. I repeat what I have said above. It also appears the DA has selectively

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by several loops and a final vertical stroke.



quoted from Constitutional Court judgments without acknowledging the factual distinctions in those cases.

56 In any event, section 7(4) of the VAT Act does not violate the general principle that only elected legislatures may impose taxes. That principle is respected by the design and operation of the provision, for several reasons:

56.1 First, section 7(4) of the VAT Act was itself enacted by a democratically elected Parliament. It forms part of the statutory framework governing VAT and was passed through the proper constitutional processes applicable to money bills. It is, in other words, a legislative choice made by Parliament to create a mechanism for temporary rate adjustments within a carefully defined and time-bound structure. The delegation flows directly from Parliament's power to raise taxes, not around it.

56.2 Second, section 7(4) does not introduce another tax. Section 7(1) of the Act creates a tax known as VAT, and the provision also imposes an obligation to pay it. The provision remains in force and is not amended by the Minister's temporary announcement under section 7(4). What section 7(4) permits is a short-term rate adjustment within the existing VAT system. The nature of the tax, the persons liable, and the scope of exemptions remain unchanged.

56.3 Third, the adjustment must take place as part of the national annual budget process. That entire process is governed by the Constitution, PFMA, Money Bills Act, which requires public consultation during the parliamentary process, detailed parliamentary debate, and full political scrutiny. Far from

bypassing Parliament, the section 7(4) adjustment is introduced through the legislative body within a high-profile, transparent, and accountable process that incorporates and reflects a representative democracy.

56.4 Fourth, as explained above, section 7(4) aims to allow for immediate (or near-immediate action) intervention to ensure fiscal balancing and responsibility. After all, the regular parliamentary process for adopting or amending money bills take several months to complete. Section 7(4) provides a lawful and limited mechanism to respond swiftly to revenue pressures or emerging fiscal risks in a way that supports the national budget. This objective would be impossible to achieve through the ordinary legislative process alone.

56.5 Fifth, the Minister of Finance's announcement under section 7(4) has no permanent effect. If Parliament does not pass legislation within 12 months to give effect to the adjusted rate, the rate lapses, and the original VAT rate under section 7(1) continues to apply from that date forward. This ensures that the final word on the rate rests with Parliament and that the executive cannot impose a lasting tax burden without legislative approval.

57 While I understand that the DA now considers section 7(4) unconstitutional, I do not believe that the DA will seriously contend that it is undesirable to have a measure like section 7(4) of the VAT Act on the statute books. When section 7(4) was introduced as an amendment to the VAT Act, the DA did not oppose it in the National Assembly (there was no dissenting vote), and the Western Cape Province, which is governed by the DA, voted in favour of the amendment in the National Council of

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'G' shape followed by several vertical strokes.

Province. This underscores that section 7(4) has long been regarded, including by the DA itself, as a sensible and reasonable fiscal tool.

58 Third, the DA argues that my decision of 12 March 2025 is constitutionally invalid for two reasons (see paragraph 18.12 of its founding affidavit).

58.1 First, it contends that if this Court finds section 7(4) of the VAT Act unconstitutional, my decision under that provision must automatically fall away.

58.1.1 I disagree with the basis for this submission for the reasons above.

58.1.2 In addition, assuming that section 7(4) is invalid, I submit that it would be just and equitable to suspend the declaration of invalidity to allow Parliament an opportunity to cure the cause of the invalidity and preserve any decision made under the provision. If these orders are not made, there would be severe harm to the public fiscus.

58.2 Second, it argues that even if section 7(4) is constitutionally valid, my decision is reviewable if I knew in advance that Parliament would not support the necessary legislative amendment. My response to this is twofold.

58.2.1 While I accept that tax increases are politically difficult, I believe that, when the proposed amendment to section 7(1) is debated, a

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by several loops and a final vertical stroke.



majority in Parliament will support it as a responsible and necessary fiscal step.

58.2.2 The conduct of the DA itself, demonstrates this. Prior to me making the announcement, discussions were held with political parties forming part of the Government of National Unity on the possibility of a VAT increase. During those discussions, the DA, currently the second-largest political party in the National Assembly, indicated that it was open to a 0.5 percentage point increase in the VAT rate, subject to certain conditions, not relevant to this application, being met. This demonstrates that the DA is not, in principle, opposed to a VAT increase.

58.3 In any event, I do not accept this as a valid legal ground to challenge or set aside a decision made under a constitutionally authorised statutory provision. Section 7(4) expressly anticipates that Parliament may or may not adopt the proposed legislative amendment. The structure of the provision allows the Minister to act and for Parliament to decide later whether to confirm or reject the rate change. That is the design of the law.

58.4 The fact that Parliament may ultimately take a different view does not render my announcement invalid or make it a bad faith decision. Section 7(4) is designed precisely to allow the executive to act immediately, and for Parliament to decide later whether to give that decision permanent effect (and, if not, to make a different decision to ensure fiscal balancing as required by the Money Bills Act).

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

## The DA's prayer for interim relief

59 The DA seeks, in prayer 3 of Part A of its notice of motion, an interim order in the following terms:

"The operation of the First Respondent's announcement on 12 March 2025, to increase the rate of value-added tax in terms of section 7(4) of the Value-Added Tax Act, 1991 by 0.5% with effect from 1 May 2025 and by a further 0.5% with effect from 1 April 2026 (the Minister's Decision), is suspended pending the final determination of the constitutional challenge in Part B."

60 And in paragraph 4, it also seeks an order that:

"To the extent necessary, the Second Respondent is interdicted from implementing the Minister's decision, pending the final determination of the constitutional challenge".

61 The DA is not entitled to the relief.

62 First, contrary to what is claimed in its founding affidavit, the DA has not established a *prima facie* right.

62.1 As explained above, the DA misinterprets section 7(4) of the VAT Act. The provision does not confer plenary legislative powers on the Minister of Finance. It authorises only a narrow, temporary adjustment to the VAT rate — subject to legal constraints and parliamentary oversight. Even if this Court accepts that section 7(4) amounts to a plenary delegation, the DA has not shown why such a delegation would be unconstitutional under the test set out in *Nu Africa*. The DA's further contention, that section 7(4) is invalid because only elected legislatures may impose taxes, is also misplaced. As demonstrated above, the provision was enacted by Parliament, applies to

an existing tax, operates through the budget process, and leaves the final decision to the legislature. None of this violates the Constitution.

62.2 If the DA is ultimately correct and the Constitutional Court declares section 7(4) unconstitutional, that would still not entitle the DA to the relief it now seeks. Given the context matter — including the potential fiscal disruption and harm to the public interest — the apex court would likely suspend any order of invalidity to allow Parliament time to cure the defect, and it is likely also to preserve any decision made under section 7(4). That consideration alone strongly undermines any suggestion that the DA has demonstrated a *prima facie* right to the interim relief sought.

62.3 The DA also alleges that the VAT increase from 15% to 15.5% infringes the rights of access to food and healthcare protected under section 27(1) of the Constitution. That argument is not developed and is unsupported by any evidence. It should be rejected on that basis alone. More importantly, the VAT system already exempts many essential food and healthcare items through zero-rating provisions.

62.3.1 South Africa's VAT system protects the most vulnerable by ensuring that essential food items listed in Schedule 2 of the VAT Act remain zero-rated and entirely unaffected by any VAT rate increase. This includes a wide and diverse range of staples — from brown bread, maize meal, samp, and lentils, to fresh fruit and vegetables, rice, milk, eggs, and even canned pilchards — covering everything from breakfast to dinner items for millions of households. These zero-rated goods will continue to shield

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.



households from additional tax burdens, no matter a VAT rate change.

62.3.2 Healthcare access is also protected. Those who belong to medical schemes continue to benefit from two important tax protections: they receive a medical tax credit for contributions to medical schemes. (within the limits of the applicable legislation); and second, medical schemes are exempt from charging VAT on those contributions. For other members of society, access to healthcare through the public system remains unchanged. I therefore do not accept the claim that a 0.5% VAT rate increase will result in a deprivation of access to healthcare. On the contrary, the increase helps to fund public programmes, including the healthcare system that serves millions of South Africans.



62.4 The argument that the VAT increase would materially harm access to food and healthcare is also inconsistent with the DA's conduct. During negotiations within the Government of National Unity, the DA indicated its willingness to support a 0.5 percentage point VAT increase, provided certain demands were met. At no point did it raise concerns about the ability of poor or working-class households to afford food or healthcare as a result of the adjustment that it was willing to support.

62.5 Moreover, the VAT increase is precisely what allows the state to raise sufficient revenue to fund its core social obligations, including healthcare and social protection. Far from undermining the rights guaranteed in section 27 of the Constitution, the increase supports their realisation.

63 Second, the balance of convenience does not favour the granting of interim relief.

63.1 On one side of the scale is the significant and immediate harm that would result if my announcement is suspended. The National Treasury has estimated that the 2025/26 budget is based on the assumption that the 0.5 percentage point VAT increase will generate approximately R13.5 billion in additional revenue this financial year. If the rate increase is halted now, that revenue will be lost, and the State will be left without the funds needed to meet already-budgeted spending commitments. The major point is this: if the government is denied the ability to raise the additional revenue through the VAT rate adjustment (and section 7(4) is ultimately upheld as constitutional, which I respectfully submit is likely), the government and the public will suffer immense and unnecessary prejudice.

63.2 The consequences would be severe and far-reaching. Government would be immediately forced either to cut expenditure or to increase borrowing. Both options carry risks. Spending cuts would likely fall on essential education, healthcare, housing, and social protection programmes. These disproportionately affect the poor and vulnerable. Increased borrowing would further strain the fiscus, undermine investor confidence, and increase the cost of public debt. These outcomes would interfere with the careful fiscal balancing that underpins the national budget and could trigger cascading harms, including credit rating downgrades, service delivery disruptions, and broader economic instability. It may also likely result in more significant tax increases in the future.



- 63.3 These risks are not hypothetical. They are the very harms that section 7(4) was designed to prevent by allowing swift, time-bound adjustments to secure the public finances pending Parliament's final decision. The balance of convenience overwhelmingly favours avoiding these harms.
- 63.4 On the other side, the prejudice that the DA claims is both speculative and overstated. Indeed, it should not be forgotten that the extra revenue raised through the VAT rate adjustment will form part of the National Revenue Fund and be used for the public benefit.
- 63.5 Most importantly, the DA is responsible for the alleged prejudices it claims will be suffered. Section 7(4) of the VAT Act was introduced through a legislative amendment signed into law in early 2017. The provision has been part of South Africa's tax framework for over nine years. At no point during that time did the DA seek to challenge its constitutionality.
- 63.6 Only after a political disagreement about the contents of the 2025 Budget has the DA rushed to court, seeking urgent and far-reaching relief. This sequence of events undermines the urgency it claims and strongly suggests that the present challenge is driven by political dissatisfaction rather than genuine constitutional principle. It is also worth noting that I am not the first Minister of Finance to exercise powers under section 7(4). In 2018, the erstwhile Minister of Finance Malusi Gigaba invoked the provision to increase VAT from 14% to 15%. Parliament subsequently confirmed that increase through an amendment to section 7(1). I note that it took about a year to pass that amendment (which shows how long money bills take to enact into law). The DA raised no constitutional challenge to the exercise

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located at the bottom right of the page.



of the section 7(4) powers at that time. Its silence then, and its urgency now, underscores the opportunistic nature of its current challenge.

63.7 Finally, the DA is not without remedy. It may pursue the relief sought in Part B of its notice of motion and, if successful, to ask the Court for any just and equitable relief it deems appropriate. There is no need to grant interim relief now. The balance of convenience overwhelmingly favours refusing the interim interdict.

64 On the issue of the balance of convenience, the DA appears to contend that the *OUTA* standard does not apply to the relief sought in prayers 3 of its notice of motion (Part A). I disagree. Section 7(4) of the VAT Act confers on the Minister of Finance the power to announce a VAT increase. The relief sought interferes with the exercise of this power. But even if the broader “interests of justice” standard is applied for determining whether an interim order should be granted, the same considerations, including the principles underlying the *OUTA* test, remain highly relevant. The determination of a VAT increase is a highly polycentric, policy laden decision which balances a myriad of competing rights, interests and considerations. A Court would be slow to interfere in the policy choices made by me (assisted by the National Treasury). The harm that will fall on government and the fiscus should continue to guide the courts in determining whether it is in the interests of justice to grant interim relief in this case.

65 Third, the allegation that the DA and the public will suffer irreparable harm is unsupported. While I accept that reversing a VAT rate adjustment may present practical challenges, that does not render the harm irreparable in the legal sense.

In sharp contrast, if the VAT rate does not go into effect on 1 May 2025, there will be severe harm to the fiscus.

66 The DA's case rests on a legal foundation that, as I have shown above, lacks support. But even assuming in its favour for this inquiry, I do not accept that the public will suffer the irreparable harm alleged.

66.1 Should the Constitutional Court ultimately declare section 7(4) unconstitutional, it has the power to craft a just and equitable remedy. In this case's circumstances, the Court would probably not strike down the provision immediately. This is particularly so because the DA could have prevented this alleged harm if it had filed Part B of its application when the statute was enacted nearly a decade ago. In addition, I believe that the courts will be mindful of the need to preserve previous decisions and ensure that government is provided legal tools to adjust VAT rates urgently and on a short-term basis when the need arises. A modern economy requires such interventions.

66.2 Moreover, the revenue collected due to the VAT adjustment is not lost or misdirected. It is paid into the National Revenue Fund and used to finance programmes that serve the public interest. The money will be used to fund healthcare, education, social grants, and other public services. In that context, the claim of irreparable harm to the public cannot stand.

67 Fourth, the DA has an adequate remedy available, which is illustrated by the relief it seeks in Part B of its notice of motion. If it succeeds on the merits, it may obtain an order declaring section 7(4) unconstitutional and securing just and equitable relief.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

The DA did not challenge the provision when it was enacted, nor at any point during the past nine years that it has been on the statute books. Having failed to act timeously, it cannot now claim that it is without an adequate remedy.

68 In addition, the Court should consider the broader political context in which this application has been brought. It is plain that the DA's application has arisen, not because of any urgent constitutional principle, but because it did not succeed in advancing its position within government. As a member of the Government of National Unity, the DA, having failed to secure its preferred outcome, now seeks to reframe a political disagreement as a constitutional crisis. This is not the proper function of urgent judicial intervention.

69 The DA is the second largest political party in the National Assembly. It is well-resourced and has full access to the democratic process and the legislative tools available to all members of Parliament. It can seek to amend or oppose the relevant money bills, persuade other parties, and act within the bounds of parliamentary procedure. The courtroom should not become the arena in which political differences within the executive or legislature are to be resolved. And this should certainly not happen on an urgent basis and in a manner that risks severely disrupting government operations on important matters such as the fiscus.

70 I respectfully submit that the Court should resist intervening in a matter that, at its core, is a political disagreement dressed in the language of constitutional litigation.

**The EFF's position is unsupported**



71 In its intervention application, the EFF focuses primarily on challenging Parliament's adoption of the fiscal framework.

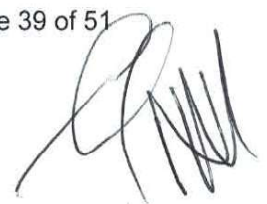
72 Even so, it also seeks an order suspending my decision to increase the VAT rate by 0.5% pending the final determination of Part B. The thrust of its argument appears to be that, because the adoption of the fiscal framework was allegedly unlawful, my announcement on 12 March 2025 is likewise invalid. This is clear from the relief the EFF requests in prayer 5 of its notice of motion, which links the lawfulness of my announcement to the lawfulness of the adoption of the fiscal framework, treating the announcement as though it were part of that framework.

73 More specifically, the EFF seeks an interim interdict in the following terms:

"interdicting the respondents from giving effect to the Impugned Report and the Fiscal Framework or taking any steps in relation thereto, including the introduction of the .5 percentage points Value-Added Tax increase, pending finalisation of Part B of this application".

74 The EFF is not entitled to the relief.

75 I point out that no relief is sought against the Minister of Finance in Part B of the notice of motion. In particular, no final relief was sought to set aside or declare invalid my announcement made under section 7(4) of the VAT Act. This omission is significant. It means that the applicants have not asked the Court, in the main proceedings, to undo the very act they now seek to interdict on an interim basis. It follows that the relief sought against the Minister of Finance (and SARS) in Part A is incompetent on that ground alone.

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by several vertical strokes.

76 It also appears that the EFF's submissions are premised on a view that my VAT rate announcement is unlawful because of the allegedly unlawful adoption of the fiscal framework (see paragraph 98). That view has no legal basis.

76.1 Section 7(4) of the VAT Act empowers the Minister of Finance to make a temporary VAT rate adjustment at the time of the national annual budget. I exercised that power on 12 March 2025. Even if one assumes the subsequent adoption of the fiscal framework was flawed (a contention I dispute), that is unrelated to the lawfulness of my earlier announcement under section 7(4) of the VAT Act. The announcement continues to exist and has legal effect.

76.2 The fiscal framework is not legislation. Nor does it impose taxes. It is a parliamentary resolution that sets out revenue proposals, expenditure estimates, and related fiscal targets over the medium term. After it is adopted, the resolution's purpose is to govern proposed amendments to relevant money bills (see section 8(9) of the Money Bills Act). The adoption or amendment of the fiscal framework does not undo, change or retrospectively invalidate a statutory power that has already been exercised.

76.3 Indeed, in terms of the section 7(4) of the VAT Act, only an Act of Parliament can confirm (or change) my VAT-rate adjustment by passing the relevant Rates and Monetary Amounts and Amendment of Revenue Laws Bill into law (or amending it).

77 I can identify three possible grounds on which the EFF appears to rely to interdict giving effect to my announcement. None of them are with merit.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a final vertical stroke.

78 First, in paragraph 91, the EFF alleges my announcement is irrational and should be set aside under the principle of legality. However, it provides no reasons or evidence to support that claim. I reiterate that the VAT rate adjustment is part of the annual budget, which the National Treasury carefully prepared to balance revenue, expenditure and debt. It reflects the National Treasury's best judgment on raising the revenue required to fund the government's social and economic obligations. There is no factual basis for labelling this decision irrational.

79 Second, in paragraph 98, the EFF suggests that my announcement is unlawful because the adoption of the fiscal framework was unlawful. I dispute this. As set above, section 7(4) operates independently of the fiscal framework resolution. Any alleged irregularity in adopting the fiscal framework does not invalidate my announcement. Only an Act of Parliament can confirm or override the rate change.

80 Third, in paragraphs 99 and 100 of its founding affidavit, the EFF alleges that my decision was irrational and unconstitutional because I acted with deception and dishonesty. The basis for this appears to be an accusation that I gave the public the impression that the VAT rate increase could still change, even though I allegedly knew it would not. The submission is unsupported.

80.1 With respect, this allegation is both unsupported by any evidence and difficult to follow. I have never suggested that I could revoke the announcement at will, nor have I misled the public. From the outset of my announcement, the National Treasury, SARS, and I have consistently and publicly stated that the VAT rate will increase to 15.5% on 1 May 2025. That remains my position.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by several loops and a final vertical stroke.



80.2 If the EFF holds a different perception, that was not created by me.

80.3 In any event, I do not accept that this allegation can form the basis of a valid legal challenge. The announcement was lawfully made on 12 March 2025 as part of the annual budget process. Any comments or perceptions that may have arisen after that date cannot undo the legal effect of the announcement. Nor can post-announcement remarks render a decision that was validly taken irrational or unconstitutional.

81 For these reasons, the prima facie right relied on by the EFF is not supported by fact or law and cannot justify the relief it seeks in part A of its notice of motion. In addition and for the reasons already set out above in relation to the DA's application the EFF fails to meet the other requirements for interim interdictory relief.

**Seriatim response: DA's founding affidavit**

82 I now turn to respond to the affidavits filed on behalf of the DA and the EFF, to the extent necessary. Where I do not address a specific allegation, it should be taken as denied, unless doing so would be inconsistent with the position I have set out above. I reiterate that I will respond more fully to the affidavits when I answer the relief sought in Part B of the notices of motion.

**83 Ad paragraph 9**

83.1 It is correct that I reluctantly considered a 2% VAT hike. However, I was always aware of the impact of any increase in the VAT rate and therefore

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by several loops and a final vertical stroke.

sought, at all times, to keep any increase as small as possible to minimise the impact on consumers.

**84 Ad paragraph 10**

84.1 This is denied. During discussions with political parties forming part of the Government of National Unity, the DA was prepared to support a VAT rate increase of 0.5%.

**85 Ad paragraph 11**

85.1 It is correct that my decision (and the fiscal framework) reflected a VAT hike of 0.5%. It is also correct that this increase will impact the price of goods and services. However, as I indicate above, I did not come to this decision lightly. On the contrary, it was a measure of last resort introduced after a complex budget preparation process which included the balancing of a broad range of considerations.

85.2 The remaining allegations are denied.

**86 Ad paragraph 18.8**

86.1 I agree that it is difficult to reverse VAT receipts and payments. But the converse is also true. If the court suspends the operation of my announcement, it would mean that the public fiscus will suffer a shortfall of about R13 billion over the next financial year, which it cannot recoup (should it be found that section 7(4) is constitutional)

**87 Ad paragraphs 18.9 to 18.12**

87.1 It is denied that section 7(4) of the VAT Act is unconstitutional. It is also denied that my announcement is constitutionally invalid.

**88 Ad paragraph 20**

88.1 I will abide by the Court's ruling on the alleged urgency of the matter and therefore do not respond to the basis on which urgency is claimed. I do, however, record that the alleged urgency is self-created. Section 7(4) of the VAT Act has been on the statute books for nearly a decade. The DA had ample opportunity to challenge its constitutionality but failed to do so timeously.

**89 Ad paragraph 39**

89.1 The allegations are denied. Apart from my announcement, the process for amending section 7(1) of the VAT Act to provide for a permanent 15.5% VAT rate has commenced. It is a legislative proposal. The statement should be read in that context.

**90 Ad paragraph 42**

90.1 The allegation is denied. As stated above, while tax increases are politically difficult decisions, I believe a majority in Parliament will support the VAT rate increase.



**91 Ad paragraph 53**

91.1 I did not attend the Committees' joint sitting on 1 April 2025.

**92 Ad paragraph 85**

92.1 While the DA complains that the committee's report misrepresents what occurred in the meeting, that issue was repeatedly raised in the National Assembly before the vote in favour of adopting the fiscal framework. All parties were aware of the alleged deficiencies. It is telling, then, that despite these complaints, a majority of Parliament voted to adopt the fiscal framework.

**93 Ad paragraph 98**

93.1 I deny the DA's interpretation of section 7(4) of the VAT. The provision does not allow the Minister of Finance to amend a statute.

**94 Ad paragraph 99**

94.1 Contrary to the DA's claims, the draft Bill demonstrates that I do not have the authority to amend section 7(1) through section 7(4). Instead, I must introduce an amendment bill to seek to change section 7(1).

**95 Ad paragraph 100.9**

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by several vertical strokes.

95.1 In this paragraph, the DA appears to have misunderstood how section 7(4) works. If Parliament does not pass a new law within 12 months, the VAT rate increase lapses, and the original rate in section 7(1) automatically takes effect again from that point forward. The adjustment does not apply retrospectively. The increased rate remains in force for 12 months unless Parliament decides otherwise.

**96 Ad paragraph 101.3**

96.1 Parliament is not powerless. I have already initiated the process of introducing the amendment legislation, as contemplated in section 7(4) of the VAT Act. In due course, Parliament will consider that bill and may approve, amend, or reject it, as is its constitutional prerogative. Furthermore, if Parliament genuinely believes that section 7(4) should no longer form part of the VAT Act, it has the power to amend the legislation.

**97 Ad paragraphs 103 to 112**

97.1 For the reasons above, the legal submissions are incorrect, and the allegations in the paragraphs are denied.

**98 Ad paragraphs 114 to 133**

98.1 For the above reasons, the DA has not met the requirements for interim relief.

**99 Ad paragraphs 134 to 136**

99.1 Without making any concession as to the accuracy of the contents of these paragraphs, I will abide by the Court's ruling on urgency. I therefore do not respond to them.

**100 Ad paragraphs 137 to 142**

100.1 I will respond fully to Part B of the notice of motion at the appropriate time. I nevertheless dispute the allegation that section 7(4) of the VAT Act is unconstitutional.

**Seriatim response: EFF's supporting affidavit**

**101 Ad paragraph 85**

101.1 I deny that my announcement was based on "illegal decision-making. Indeed, this allegation is not motivated.

**102 Ad paragraph 91**

102.1 I deny that my announcement was irrational because it "suffers from the same defects as the report in which it is contained" The allegation is unexplained.

**103 Ad paragraph 98**

103.1 If the Court finds that the adoption of the fiscal framework is improper, I deny, to the extent that this is implied, that this means that my earlier announcement cannot be implemented.

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the initials 'NLU' followed by a flourish.



**104 Ad paragraphs 99 to 100**

104.1 All factual allegations and adverse accusations made against me are denied. As I explained above, they are unsupported by any evidence, and I deny them.

**105 Ad paragraph 110**

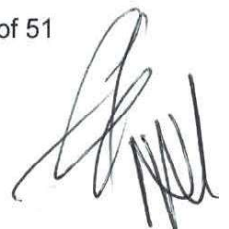
105.1 The allegation that the VAT rate adjustment results in the constitutional harms outlined in this paragraph is made at a superficial level, without any supporting facts or evidence. I deny the allegation. On the contrary, the revenue raised through the VAT increase will be used to advance and realise the objectives of the constitutional rights the EFF claims are being undermined.

**106 Ad paragraph 113**

106.1 The submission is bad in law. Even if the Court were to find that the process for adopting the fiscal framework was flawed, this is not a basis to suspend the annual budget process.

**107 Ad paragraph 114**

107.1 The allegation is denied. I did not announce an increase to the VAT rate in terms of the fiscal framework. The announcement was made under section 7(4) of the VAT Act.

A handwritten signature in black ink, appearing to be a stylized 'A' followed by a series of loops and a final vertical stroke.

**108 Ad paragraph 115**

108.1 The submission is bad in law. The exercise of my powers under section 7(4) of the VAT Act is not dependent on the National Assembly adopting the fiscal framework.

**109 Ad paragraph 122**

109.1 The EFF has failed to demonstrate that an increase in the VAT rate causes irreparable harm to one of its rights.

**110 Ad paragraphs 128 and 129**

110.1 I deny that the balance of convenience favours the granting of prayer 5 of the EFF's notice of motion. I refer to what is stated above regarding the significant harm that will result if the VAT rate adjustment is suspended.

**111 Ad paragraphs 131 to 134**

111.1 I note that the EFF has not made out a case of why it has no alternative remedy to challenge my announcement of 12 March 2025.

**112 Ad paragraphs 135 to 139**

112.1 Without making any concession, I will abide by the EFF's application to intervene and accordingly do not respond to the relevant paragraphs.

A handwritten signature in black ink, appearing to be a stylized 'R' followed by a flourish.

### **There is no need to request condonation**

113 The DA's notice of motion, filed on 3 April 2025, required me to file my answering affidavit by Monday, 14 April 2025. I am advised that the DA's attorneys subsequently extended this deadline to midday on Tuesday, 15 April 2025. Because I did not file by either of these dates, the DA's attorneys have since written to the State Attorney demanding that I apply for condonation. That demand is mistaken. This answering affidavit has been delivered well within the time periods prescribed by rule 6 of the Uniform Rules of Court, and no condonation is required under the rules.

114 It appears that the DA seeks to hold me to its own self-imposed deadlines. But that approach is flawed for several reasons. The DA elected to bring this matter as an urgent application and unilaterally chose the timelines. It must therefore justify to this Court why its proposed timeline is reasonable. It will not be able to do so. The decision it seeks to postpone was taken on 12 March 2025. Yet the DA inexplicably waited more than three weeks to launch what it now claims is an urgent challenge, affording me just over a week to respond. The lopsided and uneven approach is not justified in the DA's founding affidavit.

115 This delay is even more striking when one considers that the DA is challenging a statutory provision that has stood unchallenged for nearly a decade. Its founding affidavit provides no explanation for this prolonged inaction. Now, having delayed for weeks, it seeks to impose an unreasonably compressed timeframe on me and my office to respond to a matter with potentially far-reaching fiscal consequences.

A handwritten signature in black ink, appearing to be 'G. M. M.', is written over the page number.



116 My affidavit has been filed within a reasonable period in the circumstances. If, despite this, the Court is persuaded that the DA's timelines were reasonable and considers striking out this affidavit (should the DA bring such an application), I respectfully request that the Court permit its admission, having regard to the reasons set out in this section and throughout the affidavit.

### Prayer

117 For these reasons, I respectfully request that the Court dismiss prayers 3 and 4 of the DA's notice of motion (Part A), and the relief sought by the EFF in prayer 5 of its notice of motion, to the extent that it concerns the VAT rate increase (Part A). I further seek an order for costs, including the costs of three counsel (scale C).



ENOCH GODONGWANA

Thus signed and sworn to before me at Gqeberha on this the 16 day of **APRIL 2025** by the deponent who has declared that he has read the contents of this affidavit and knows and understands the contents therein and that he has no objection to taking the oath in the prescribed form and considers the oath to be binding on his conscience.



COMMISSIONER OF OATHS

Full names:

Business address:

Designation:

Capacity:

**NANDE MHESHE**

66 RING ROAD  
GREENACRES, GQEBERHA 6045

COMMISSIONER OF OATHS

PRACTISING ATTORNEY  
REPUBLIC OF SOUTH AFRICA