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MEDIA STATEMENT

RETRACTION OF THE PROPOSAL IN RESPECT OF THE DEFINITION OF A HYBRID EQUITY INSTRUMENT IN THE 2025 TAXATION LAWS AMENDMENT BILL

National Treasury and the South African Revenue Service (SARS) published the 2025 draft Taxation Laws Amendment Bill (2025 draft TLAB) and the accompanying Explanatory Memorandum (EM) on 16 August 2025 for public comment. The closing date for the public comments is 12 September 2025.

The 2025 draft TLAB proposes that the definition of a “hybrid equity instrument” contained in section 8E of the Income Tax Act be refined. The current approach relies on a set of anti-avoidance criteria and rules (that includes a three-year rule) to determine whether a preference share has debt-like features. If so, the preference dividend is deemed to be taxable income in the hands of the holder to ensure the correct tax treatment.

The proposal’s aim is to shift to a principle-based approach that classifies a financial instrument based on its substance rather than its legal form, as is the case in several other countries. For example, if a preference share is redeemable on a specific date and/or has a fixed mandatory dividend, it should be treated as a loan (debt) for tax purposes. This ensures that financial instruments that are economically similar to debt are treated as such for tax purposes, thereby preventing the misuse of dividend exemptions to reduce tax liabilities.

However, numerous commentators have raised concerns with National Treasury and SARS that the current broad wording in the draft TLAB in relation to this proposal will effectively eliminate preference shares as a viable means of financing. Although the amendment is in draft form and could still be amended after further consultation, the uncertainty surrounding the proposal is impacting on current transactions, with a potential delay in investments. To avoid a negative impact on current financing, the Minister of Finance, on the advice of National Treasury and SARS, has decided to retract the proposal in respect of the definition of a “hybrid equity instrument” from the 2025 draft TLAB.

Any future proposals on structural changes to the taxation of hybrid equity instruments will follow a consultative process with all stakeholders to identify a balanced tax approach that takes into consideration the concerns of both stakeholders and government before draft tax legislation is published.

For any enquiries please contact Media@treasury.gov.za.

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