Treasury to amend hybrid debt taxation proposals

Treasury has agreed to amend some of its proposals on the taxation of hybrid debt instruments in response to comments made by tax experts on the draft Taxation Laws Amendment Bill.

Significant concessions have also been made on the proposals to tighten up the regime for tax incentives for research and development (R&D) and several of the retrospective provisions in the bill - which raised a storm of protest - have been removed.

All these agreements by Treasury however will be subject to final approval by Finance Minister Pravin Gordhan, officials told the Parliament's standing committee on finance during a briefing on Treasury's responses to public comments on the bill.

The proposals on hybrid debt instruments were introduced to protect the tax base from erosion and prevent profit-shifting through excessive deduction of interest by using artificial or hybrid debt instruments (such as convertible loans).

These instruments are in fact more like equity instruments than debt but are used because interest is subject to a lower tax rate than equity. In terms of the proposals these instruments will be reclassified.

Treasury has decided to withdraw the proposed rules dealing with the limitation of deductions on connected parties to allow for further consultation and to consider their full commercial implications.

It also has agreed to defer the effective date of the hybrid debt instrument proposals to April next year to allow taxpayers to restructure their transactions in the light of the new rules.

Critics of the bill were concerned that the proposed new rules would only apply to debt owed by resident companies and not to branches of foreign resident companies.

Treasury has accepted this criticism and agreed that the rules would apply to all companies and not only to resident companies.