

TLAB: Converting debt to equity revisions

National Treasury's proposed changes in the draft Taxation Laws Amendment Bill, 2017 (TLAB) on converting debt to equity were presented in a workshop on 26 September 2017. These proposed amendments in the draft TLAB are in sections 19, new sections 19A and 19B, and paragraph 12A of the Eighth Schedule in the Income Tax Act 58 of 1962.



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It appears that National Treasury is considering the following changes in the final bill on the debt conversion into equity proposals:

- the removal of the proposed new sections 19A and 19B;
- the removal of the definition of "reduction amount" in section 19. In its stead, the concept of a "debt benefit" is proposed which aims to better encapsulate different scenarios under which a debt claim can be reduced, either by way of a debt to equity conversion or some other concession. As a consequence of the new "debt benefit" concept, National Treasury has proposed that a supporting - "concession or compromise" - definition would also be included in section 19;
- the debt to equity conversions between companies that form part of the same group of companies, as defined in section 41, shall be excluded from the application of the debt forgiveness rules, for now;
- in relation to mining companies, the proposed amendment will be made with reference to the new defined term of "debt benefit" and the exclusions in paragraph 12A will apply to taxpayers engaged in mining operations. The exclusion in respect of debt that is reduced in the course of, or in anticipation of, a liquidation, winding-up or deregistration will not be provided for as this exclusion has been ear-marked for review in the 2018 amendment cycle;
- in relation to dormant group companies, a company will be regarded as being dormant if it did not trade in the year a debt is forgiven and the immediately preceding year; and
- the proposed amendment is expected to apply in respect of years of assessment commencing on or after 01 January 2018.

"Generally, National Treasury's revised proposals and clarifications in the workshop were preferred to those contained in the draft TLAB. In particular, the removal of sections 19A and 19B from the draft TLAB is to be welcomed. National Treasury also indicated that further refinements would be made to the proposals.

"National Treasury also indicated that they were working towards introducing the final bills at Parliament on 25 October 2017, which is the date that the Finance Minister, Malusi Gigaba, is expected to present the Medium Term Budget Policy Statement," say Wesley Grimm and Joon Chong from Webber Wentzel.

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