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FEEDBACK SUMMARY
NATIONAL TREASURY
2023 TLAB WORKSHOP
THIRD-PARTY BACKED SHARES (s8EA)

[13 October 2023]

GENERAL

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The below Feedback Summary should be seen in the above context as merely attempts to inform SAICA members of the discussions and of any proposals that were made during such discussions.

FEEDBACK SUMMARY

The National Treasury (NT) held a **follow-up workshop** to further discuss the 2023 proposed amendment to section 8EA of the Income Tax Act (third-party backed shares). The matter was initially discussed at the 2023 TLAB workshop on 7 September. It was reiterated that no decisions could be taken by NT and the ultimately responsibility to change the legislation rested with the Standing Committee on Finance.

The following matters were discussed, and points raised:

1. Clarifying anti-avoidance rules dealing with third-party backed shares: s8EA

Taxpayers' concerns (7 September workshop):

1.1. Winding-up of preference shares

Where the pref structure is being wound up, the issuer needs to first sell the equity shares in the operating company to generate the cash needed to declare the final dividend to the pref shareholders. Safer to do it this way. If issuer 1st declares the dividend to the pref shareholder, the issuer may have a cash flow problem. So it's safer to do the former.

The proposed amendment mustn't apply in this case.

Update from NT workshop (13 October):

NT: Agreed, but the structure must then be wound up within 90 days of sale of the equity shares.

1.2. Substitution of equity shares, group re-organisations and other corporate actions

What if the original equity shares in one operating company have subsequently been substituted for equity shares in another operating company?

Proposed amendment should deem this scenario to be for a qualifying purpose.

Proposed amendment should also **not** apply where the equity share held in the operating company has been transferred to another company within the same group of companies by means of the corporate reorganisation rules in PART III of the Act.

Must also not apply in respect of other corporate actions.

Update from NT workshop (13 October)

NT: Partially agree. Will further amend for the proposal **not** to apply where listed equity shares are exchanged/substituted. But the substitution/exchange must arise from 'circumstances beyond your control' (i.e. as part of an amalgamation). Will not apply to all corporate actions within the listed space.

Taxpayers' response: Application to listed shares is too restrictive. Must also include unlisted shares (private equity transactions).

NT response: Disagree. Corporate action in the unlisted space includes too many things. Too much risk for the fiscus. The regulation in the listed space gives us more comfort.

Taxpayers' response: We will send two real-life scenarios. NT agreed to this.

1.3. Operating company value deterioration

The value of the equity shares held in the operating company may deteriorate, thus necessitating the need for their disposal in order to protect the pref structure. What then?

NT: We will not change proposed amendment to account for this.

1.4. Effective date of proposal

NT: We will change it to tax years commencing on or after 1 January 2024 (current effective date of proposal is 31 July 2023).

Taxpayers' response: Many taxpayers have December year-ends. January 2024 is too close for them. Three of the four big banks have a December year-end.

NT: This is ultimately an anti-avoidance provision, so we do not want to push the effective date too far into the future.

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