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Submission File

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South African Revenue Service
Private Bag X923
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BY E-MAIL: policycomments@sars.gov.za

Dear SARS

COMMENTS ON THE DRAFT INTERPRETATION NOTE ON SECTION 8E – EFFECT ON THE DATE OF ISSUE OF A SHARE ARISING FROM A CHANGE IN THE REDEMPTION FEATURES

The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make a submission to the South African Revenue Service (SARS) on the Draft Interpretation Note (IN) that considers whether adding redemption features or making a change to the existing redemption features of a share constitutes a new date of issue for purposes of section 8E.

We set out below our comments in this regard.

COMMENTS

Example 3

1. We appreciate the concessions granted in this example, however, we do not believe that it is correct for the following reasons:

   a) The relevant provision is paragraph (b) of the definition of 'date of issue' that reads as follows: "*the company at any time after the share has been issued undertakes the obligation to redeem that share in whole or in part*".

   b) Example 4 deals with the situation where a three-year preference share – that is not a hybrid – has its terms changed to reduce the period to 30 months. The example correctly states that this is a new date of issue.

   c) Example 3 deals with an example where the terms are changed to extend a three-year preference by six months, and this is not, says the IN, a new date of issue.

   d) But they are both governed by paragraph (b) of the definition of 'date of issue'. Nowhere in the words does it indicate that the provision relates only to an initial obligation to

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redeem, such as in examples 1 and 2, or a reduction of a predetermined period after which it will be redeemed, such as in example 4 – it simply refers to an undertaking to redeem, and that applies in respect of all four examples.

e) One might argue that there is a mischief in examples 1, 2 and 4 that does not exist in example 3, but we do not think that this is correct. Economically or commercially, there is no difference (arising from the issuer's financial position), between the parties agreeing (a) to extend the period by six months, or (b) the holder of the original preference share agreeing to subscribe for a second redeemable preference share that must be redeemed after six months, and the issuer uses the proceeds of the second preference share to redeem the original preference share on its due date.

2. Submission: SARS would clearly not accept that the second, six-month preference share, is not a hybrid. Accordingly, we see no reason to give the words in paragraph (b) of the definition a different interpretation where the period is extended. The example should be amended to take this into account.

Scenario not contemplated in the Draft IN

3. One situation that is not commented on in the Draft IN is the following:

A redeemable preference share is issued on 1 January Year 1 with a redemption date of 30 June Year 5. This share is not subject to section 8E because the redemption date is outside the three-year period after issue of the share. On 31 January Year 2 the redemption date is brought forward to 31 December Year 4.

4. Submission: This situation should be included in the IN and the application of the 'date of issue' to this example should be clarified.

Conclusion

5. We once again thank SARS for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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