

**Presentation to the Parliamentary
Standing Committee on Finance
at Public Hearings**

**Draft Taxation Laws Amendment Bill
&
Draft Tax Administration Laws Amendment Bill
2017**

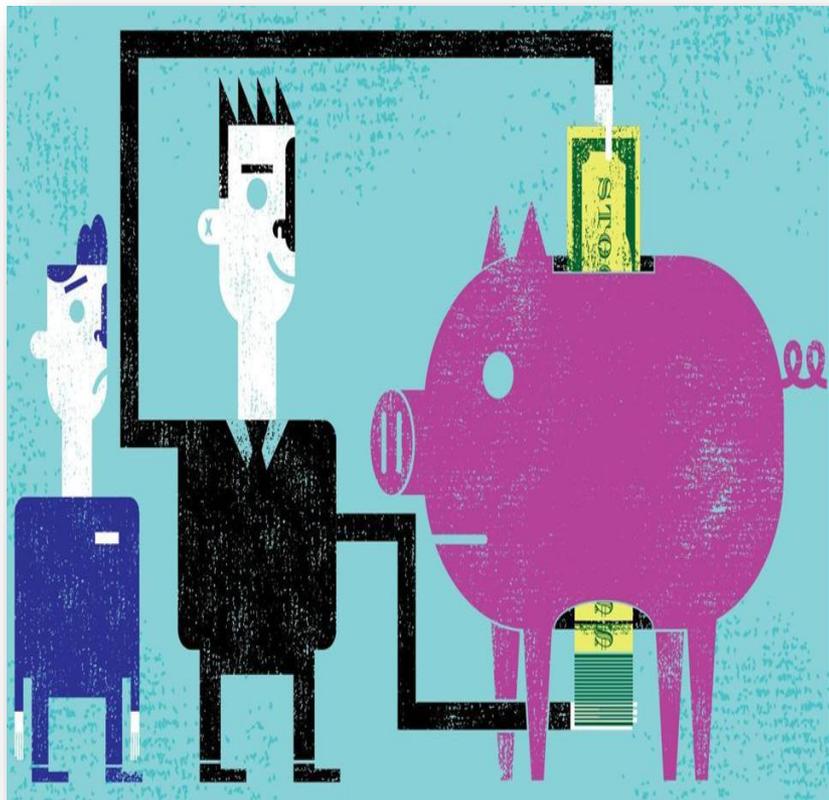
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Foreign remuneration exemption: Going, going, gone?

- Widespread opposition to the repeal; various reasons
- Exemption is a simple way to give double tax relief
- Alternative system of claiming foreign tax credits from SARS is not working:
 - no monthly credit against PAYE (double tax upfront)
 - practical documentary requirements hard to meet
- Absolutely critical to first fix the credit system



Share buy-back anti-avoidance: Going a dividend too far



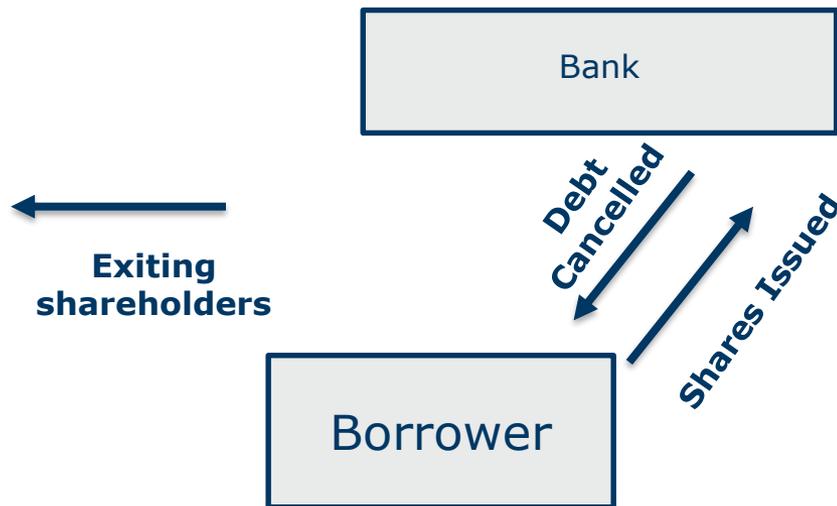
- Mischief is where a taxable capital gain on the sale of a company is converted into a tax-free dividend
- Agree that the mischief should be addressed
- Proposal goes too far
- Dividends in the ordinary course as well as pure preference share dividends are unfairly hit and taxed
- Innocent redemptions and share buy-backs also caught even if no sale plan because of 2nd trigger (by reason of / in consequence of)

Not a Good Time To Narrow Tax Relief for Business Rescue

- The proposed bill significantly increases the tax charge on debt relief despite the multiple government statements to the contrary
- General academic rule:
 - An indebted taxpayer is often subject to tax when the debt is cancelled (because the indebted taxpayer is supposedly enriched)
 - The practical impact is to slow the indebted taxpayer's recovery to financial health
- Please reject these proposals

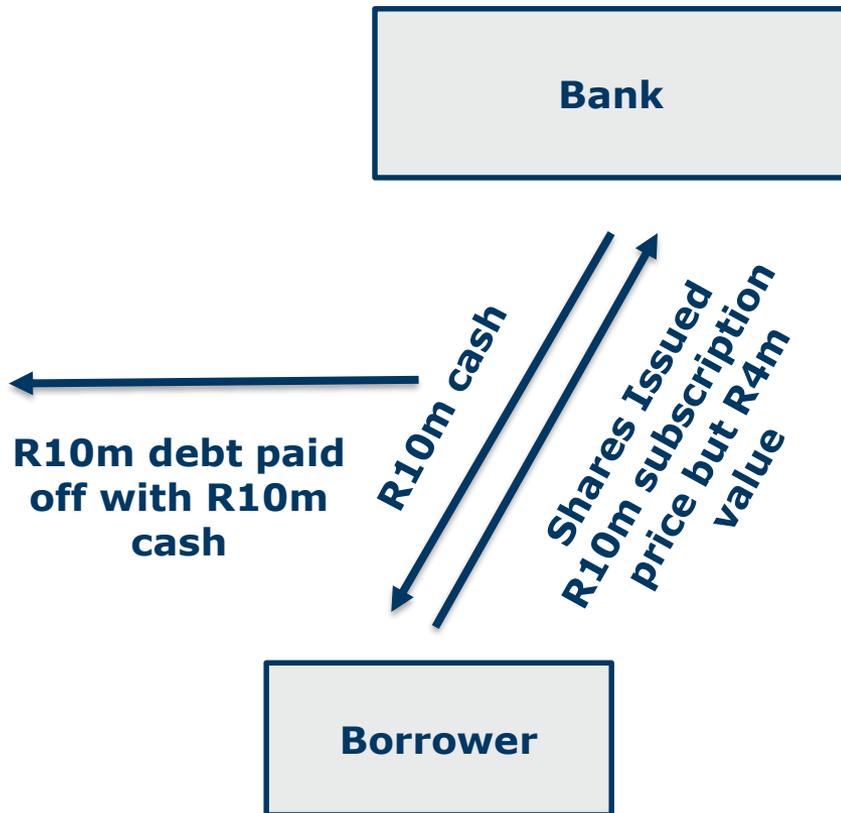


Creditor Rescue: Debt-for-Share Conversions



- Banks do not cancel debt lightly
- In severe circumstances, banks may cancel debt in exchange for the debtor's shares in the hopes of revival
- This conversion was previously tax-free, but the bill imposes tax on the debtor (regardless of the share value vis-à-vis the debt)

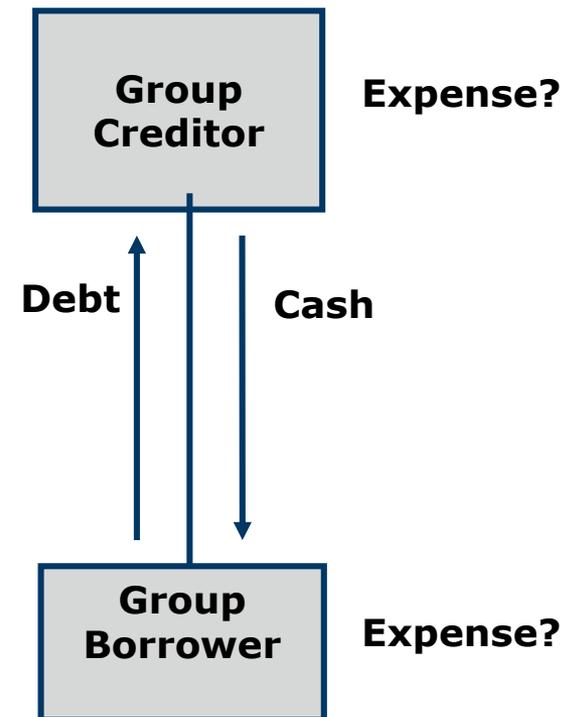
Perceived Avoidance



- The Bill is aimed at share-value mismatches where the shares issued are over-valued
- Point #1: Only the perceived mismatch should trigger tax (like section 24BA)
- Point #2: Is the mismatch really such a problem as a practical matter if the value problem stems from insolvency?

Intra-Group Business Rescue: Intra-Group Debt Cancellations

- Groups often cancel internal debt between group members to clean-up the internal books, especially during difficult economic times
- This cancellation was previously tax-free, but the bill generally removes this treatment
- NO ABUSE:
 - The current rule eliminates the creditor loss as well as the potential debtor gain
 - Had the creditor paid the external expense directly, the creditor would have had the tax benefit
 - The transaction simply moves the external expense (when the group should be perceived as a single economic unit)



Intra-group debt cancellations: New dormant company relief



- New proposal to provide specific relief for distressed dormant group companies
- The requirements for relief are excessive and will unnecessarily delay the cleaning up of groups
- Non-activity requirement is unrealistic e.g. it may be breached by annual tax or regulatory compliance
- Period of non-activity (at least 3 years) is unnecessarily long

Cross-border debt:equity swaps: Interest recoupment oppressive

- Cross-border debt:equity swap effectively recharacterises the loan as equity going back 5 years by recouping the interest
- It is unfair to treat all conversions as evil
- SA law already too harsh vis-à-vis cross-border debt
- There are now 3 hurdles:
 - Thin capitalisation (TP)
 - Section 23M limit (40% rule)
 - This proposal to recoup

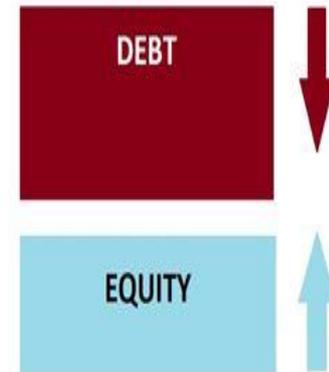
Debt-Equity Swap...Consequences

Prior to the debt-equity swap



SHORTFALL
NOT COVERED BY EQUITY

Following the debt-equity swap



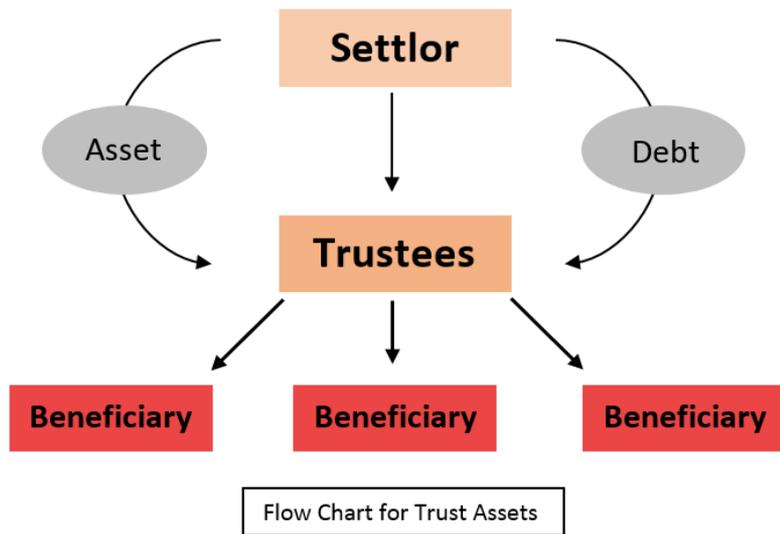
NOT COVERED BY EQUITY
SHORTFALL

Banking and Regulated Creditors: Discouraging Debt



- The Bill takes a tough stand on banks
- The Bill fails to follow IFRS impairment of troubled debt and the interest calculation on debt
- The costs of bank lending should not be increased given the loss in SA's credit status
- IFRS is a true reflection of income given that IFRS is key for regulated bank solvency and a true reflection of income for listed shareholders
- Regulated non-bank lenders should similarly be able to rely on IFRS

Distributions received by SA resident beneficiaries from foreign trusts: don't bring the money home



- Proposal seems to be aimed at family wealth even though this was not explicitly foreshadowed in the Budget Review
- Drafting appears unintentionally wide - one more than 50% held foreign subsidiary taints everything else held by the trust @ 45% income tax
- Will deter repatriation as violates participation exemption
- Growing attack on wealth drives the wealth away

Mining Rehabilitation Funds: Sledgehammer approach

- Funds one of the legal methods to make financial provision for rehabilitation
- Upfront deduction of cash paid into fund by mining group – strict rules for use
- Heavy tax penalties for non-compliance now more onerous (direct 40% tax with limited remedies)
- Unlikely to deter criminals
- Mining groups would like a government certification before they use the funds



Business Tax Incentives: Nothing to be excited about

Good news:

- Industrial Policy Project window period extended from 31 December 2017 to 31 March 2020
- Welcomed but certainty will only become available to potential investors if additional budget allocated
- Requirement that approval needed before project assets are ordered; delays
- Needed to stimulate growth which will raise tax

No news:

- Certain industry concerns (raised in the past) remain unresolved and are likely to cause problems e.g.
- Energy Efficiency Savings: implementation periods in the law does not neatly line up with periods used by SANEDI
- Special Economic Zones (SEZ): the connected person test remains a detractor and/or trap for the unwary – needs to be addressed to give SEZ's a chance

Tax Administration: Need for justice

- No formal response to / engagement on our Annexure C submissions for the 2017 Budget on the Tax Administration Act
- Would like to see a more consultative process being followed in relation to tax administration
- Separation of powers?
- The legislation should provide accessible remedies to taxpayers to protect their rights
- E.g. Suspension of payment:
 - Pay-now-argue-later principle applies unless SARS grants request for suspension of payment
 - If SARS denies request for suspension of payment the only legal recourse is a costly High Court review
 - Suspension of payment only available in objection and appeal process not others
 - SARS can bankrupt a business by a mere assertion and leave them with little defence against baseless assessments

Business Assaulted from All Sides in Tough Economic Times



- Local Tax Administration
- Global Tax Administration
- Local Tax Legislation
- Global Tax Legislation
- Local Regulation
- Global Regulation

THANK YOU