

Update on unforeseen preference share amendments

The 2019 Taxation Laws Amendment Bill (TLAB) contains a significant and unexpected amendment to the definition of "hybrid equity instrument" in section 8E of the Income Tax Act, which was discussed in a previous [alert](#).



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The TLAB will treat a preference share as a "hybrid equity instrument" if

“ *the issuer of that share is obliged to redeem that share or to distribute an amount determined with reference to the issue price of that share ... within a period of three years from the date of issue.* ”

The Standing Committee of Finance (SCOF) met this morning at Parliament to consider and adopt the reports on the tax bills, including the TLAB.

There was acknowledgement at the meeting that there was a technical error in the section 8E amendment in the TLAB.

An amended bill will therefore be tabled for approval at the National Assembly on 26 November 2019 to correct this.

The proposed correction to the amendment provides for preference shares to be "hybrid equity instruments" if

“ the issuer of that share is obliged to redeem that share or to distribute an amount constituting a return of the issue price of that share (in whole or in part) ... within a period of three years from the date of issue of that share. ”

Ultimately, the intention is to ensure that distributions are not made in respect of preference shares within three years from the date of issue that, in effect, strip out all the economics of the instrument without a redemption actually taking place. It is in our view still questionable whether or not this proposed correction clearly articulates this, but expect this to be how it is applied in practice going forward.

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