

Ludwig Smith

Director



Ludwig Smith is a Director in our Corporate and Commercial practice. He advises clients on banking and finance transactions, corporate restructures and tax matters.

About Ludwig

Credentials

Education

- B.Com, LLB, University of the Witwatersrand
- HDip (Company Law)
- Year of admission: 1982
- Registered with the Legal Practice Council

Experience

- Acted for Old Mutual in their demutualisation.
- Acted for Steinhoff International Holdings in the issue of Euro denominated convertible bonds (deal value approximately R3 billion).
- Advised on the formation of the Housing Impact Fund South Africa, a private equity and debt fund with committed capital in excess of R9 billion, and the subsequent restructure of that fund in order to create three separate intermediate holding companies through which its assets are now held.
- Acted Blue Financial Services in its corporate and debt restructure.
- Housing Impact Fund South Africa
Advised the GEPF in connection with the restructure and corporatisation of private equity funds in which it was invested.

News

Contact Ludwig

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Expertise

Corporate & Commercial Law

Debt Capital Markets

Financial Services

Location

Johannesburg

Language

English

Preference share funding: SARS issues binding private ruling on section 8E and 8EA of the Income Tax Act

Before discussing BRP 379, it is worthwhile revisiting section 8E and section 8EA of the Income Tax Act 58 of 1962 (ITA). A thorough discussion of these sections falls outside the scope of this article. However, we wish to briefly discuss the effect of these sections before discussing BRP 379.

Contributed Tax Capital and Preference Shares

On 14 January 2022, President Cyril Ramaphosa assented to the Taxation Laws Amendment Bill, B22 of 2021 (TLAB), which introduced a host of amendments to the Income Tax Act 58 of 1962 (ITA). One such amendment is that, with effect from 1 January 2023, the definition of 'contributed tax capital' (CTC) in section 1 of the ITA will be amended. This article will describe the impact of the amendment to the definition of CTC on preference share funding.

Providing security and dispositions without value

In terms of section 26 of the Insolvency Act, 1936, a disposition without value may be set aside by a court if certain requirements are met. Section 2 of the Insolvency Act defines a disposition as any transfer or abandonment of rights to property excluding dispositions made in compliance with a court order.

Amendment and restatement of documents: Considerations for security providers

In funding transactions (whether by means of debt or the issue of preference shares), funders typically require security for the funding provided. This security can take the form of guarantees from companies in the same group of the borrower/issuer (Security Providers). Upon the conclusion of the funding documents (Principal Documents) as well as the security documents, the Security Providers are required to adopt financial assistance resolutions in terms of section 44 (if applicable) and section 45 of the Companies Act No 71 of 2008. Debate normally arises upon the amendment of the obligations in terms of the Principal Documents in respect of whether the Security Providers require new financial assistance resolutions.

Preference share funding: Crossing bright lines

A typical feature of a preference share funding structure is that the company (Issuer) in which the funder (Funder) will subscribe for preference shares is required to be a ring fenced special purpose vehicle (SPV). Funding preference shares typically do not give the Funder voting rights in the Issuer. However, upon the occurrence of an event of default, the Funder becomes entitled to exercise the majority of the voting rights in the Issuer (Enhanced Voting Rights). The critical question then becomes whether the Funder's entitlement to the Enhanced Voting Rights constitutes a change of control for the purposes of the Competition Act.

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Recognition

- Chambers Global
 - Chambers Global 2024 ranked Ludwig as a 'Senior Statesperson' for banking & finance.
 - Chambers Global 2012–2023 ranked him in Band 1 for banking & finance and in 2017–2022 he was ranked in Band 3 for tax.
 - The Legal 500 EMEA 2020–2024 included Ludwig in the 'Hall of Fame'.
 - The Legal 500 EMEA 2017–2019 recommended him as a leading individual for banking & finance, and recommended Ludwig for tax in 2013, 2017–2023.