

Annexure A

DRAFT

Substitution of section 8F of Income Tax Act 58 of 1962

xx. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 8F of the following section:

“Amounts paid, incurred, received or accrued in respect of hybrid debt instruments deemed to be in respect of shares

8F. (1) For the purposes of this section—

‘instrument’ means any form of interest-bearing arrangement or debt;

‘hybrid debt instrument’ means any instrument in respect of which a company owes an amount during a year of assessment if in terms of any arrangement—

- (a) the company is not obliged to repay all amounts in respect of that instrument in cash in full within 30 years from the end of that year of assessment;
- (b) the company may during that year of assessment—
 - (i) convert that amount (or any part thereof) in respect of that instrument to; or
 - (ii) exchange that amount (or any part thereof) in respect of that instrument for, shares in that company or in any other company that forms part of the same group of companies as that company; or
- (c) the obligation to pay that amount or any part thereof in respect of that instrument is conditional upon the solvency of the company.

(2) Any amount of interest in respect of a hybrid debt instrument—

- (a) is deemed for the purposes of this Act to be a dividend declared by the company;
- (b) is not deductible in terms of this Act; and
- (c) must not be included in gross income in terms of section 24J.

(3) This section does not apply to any instrument—

- (a) in respect of which all amounts are owed to a natural person that is a resident by a profit company, as contemplated in the Companies Act, that is not a public or state-owned company as contemplated in that Act;

- (b) that constitutes a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012), owed by a bank as defined in section 1 of that Act to any person that is not a connected person in relation to that bank; or
- (c) that is subject to approval by the Registrar—
 - (i) contemplated in the Short-term Insurance Act in accordance with the conditions that the Registrar determines, in terms of section 23(a)(i) of that Act which is owed by a short-term insurer defined in that Act; or
 - (ii) contemplated in the Long-term Insurance Act in accordance with the conditions that the Registrar determines in terms of section 24(a)(i) of that Act which is owed by a long-term insurer defined in that Act.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of amounts incurred or accrued on or after that date.