

Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008 and section 51 of Act 60 of 2008 and section 64 of Act 7 of 2010

xx. (1) Section 45 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion of the following subsection:

“(3B)(a) This subsection applies where an asset is acquired by a transferee company from a transferor company in terms of an intra-group transaction and—

(i) any amount incurred by that transferee company as consideration for the acquisition of that asset from that transferor company is funded directly or indirectly by the issue of any—

(aa) debt instrument as defined in section 37I(1); or

(bb) share other than an equity share; and

(ii) that debt instrument or share—

(aa) is issued by the transferee company or a company that forms part of the same group of companies as the transferee company or the transferor company; and

(bb) is issued or used for the purposes of directly or indirectly facilitating or funding that intra-group transaction.

(b) The holder of any debt instrument or share contemplated in paragraph (a) must, for the purposes of—

(i) paragraph 20 of the Eighth Schedule, be deemed to have acquired that debt instrument or share for an amount of expenditure of nil; and

(ii) section 11(a) or 22(1) or (2), be deemed to have acquired that debt instrument or share for an amount of expenditure or cost of nil.

(c) Where an amount, other than an amount of interest, is received by or accrued to a holder in respect of a debt instrument contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt instrument, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder.

(d) Where an amount, other than an amount that constitutes a dividend, is received by or accrued to a holder in respect of a share contemplated in paragraph (a) from any

company that forms part of the same group of companies as that holder, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder.”; and

(b) by the substitution in subsection (6) for paragraph (c) of the following paragraph:

“(c) the asset was disposed of by the transferor company in exchange for equity shares issued by the transferee company;”.

(2) Subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of transactions entered into on or after that date.