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CRITERIA TO BE TAKEN INTO ACCOUNT IN DETERMINING THE POTENTIAL FOR A SIGNIFICANT EROSION OF THE TAX BASE OF THE REPUBLIC UNDER SECTION 23K(3) OF THE INCOME TAX ACT, 1962

In terms of section 23K(3) of the Income Tax Act, 1962 (Act no.58 of 1962), I, Pravin Jambadas Gordhan, Minister of Finance, hereby determine that the criteria set out in the Schedule hereto shall be taken into account to determine the potential for a significant erosion of the tax base of the Republic.

P.J. GORDHAN
Minister of Finance

SCHEDULE

1. The aggregate impact of the incurral, receipt or accrual of interest on tax payable by any person that is an issuer or holder of any debt instrument as defined in section 37I(1) that was issued or used as contemplated in section 23K(2).
2. The reorganisation transaction –
 - (a) is financed at higher than a 1 to 1 debt to share ratio;
 - (b) results in higher debt levels for the transferee subsequent to the reorganisation transaction than the debt levels of the transferor before the reorganisation transaction;
 - (c) results in low projected coverage of interest expenses by earnings before interest, tax, depreciation and amortisation; or
 - (d) was financed by debt bearing interest at rates exceeding market rates of interest.
3. The nature of the debt instrument as contemplated in section 23K(2) used by the acquiring company to finance the reorganisation transaction having regard to-
 - (a) conditions associated with the rate and amounts of interest payable;
 - (b) the terms of repayment of the debt;
 - (c) whether any portion of the debt is subordinated by its creditors;
 - (d) any security or guarantee provided by any person who is a connected person in relation to the acquiring company; and
 - (e) alternative financing options which were considered for the reorganisation transaction.
4. The reorganisation transaction was entered into for the main or one of the main purposes of-
 - (a) the reduction or delay of the payment of income tax by any party to the transaction; or
 - (b) the utilisation of the consideration received by the transferor in the reorganisation transaction to earn amounts other than income