

Insertion of section 23K in Act 58 of 1962

xx. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 23J of the following section:

“Limitation of deductions in respect of reorganisation transactions

23K. (1) For the purposes of this section—

‘acquiring company’ means a transferee company contemplated in the definition of ‘intra-group transaction’ in section 45(1);

‘debt instrument’ means a debt instrument as defined in section 37I(1);

‘interest’ means interest as defined in section 24J; and

‘reorganisation transaction’ means an intra-group transaction as defined in section 45(1) to which section 45 applies;

(2) Subject to subsections (3) and (4), no deduction is allowed in respect of any amount of interest incurred by an acquiring company in terms of a debt instrument if that debt instrument was issued or used directly or indirectly—

(a) for the purpose of procuring, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction; or

(b) in substitution for any debt instrument issued or used as contemplated in paragraph (a).

(3) The Commissioner may, on application by an acquiring company contemplated in subsection (2), direct that that subsection does not apply in respect of any amount of interest incurred by that acquiring company as contemplated in that subsection if the Commissioner is satisfied, after consultation with the Minister, that the incurral of that amount or the receipt or accrual of the amount so incurred will not lead to a significant erosion of the tax base of the Republic, having regard to such criteria as may be prescribed by the Minister by notice in the *Gazette*.

(4) The Minister may, by notice in the *Gazette*, prescribe circumstances under which subsection (2) does not apply.

(5) If, subsequent to the date on which a direction is given by the Commissioner in terms of subsection (3)—

(a) there is any change in the terms of any debt instrument to which that direction relates;

(b) the holder of a debt instrument to which that direction relates is substituted; or

(c) any debt instrument to which that direction relates is directly or indirectly substituted,

that direction will cease to apply with effect from the date on which that change or substitution takes place.

(6) Where a direction granted by the Commissioner in terms of subsection (3) ceases to apply as a result of the application of subsection (5), the Commissioner may, on application by the acquiring company contemplated in subsection (2), direct that that direction must apply with effect from the date that that direction so ceased to apply if the Commissioner is satisfied that the change or substitution contemplated in that subsection will not lead to a significant erosion of the tax base of the Republic, having regard to the criteria prescribed by the Minister as contemplated in subsection (3).

(7) Where—

(a) any amount of interest is incurred by any acquiring company in terms of a debt instrument;

(b) that amount is, in terms of this section, not allowed as a deduction (after taking into account any direction given by the Commissioner in terms of subsection (3) or (6)); and

(c) the holder of that debt instrument is a company that forms part of the same group of companies as the issuer of that debt instrument, that amount must be deemed, only in relation to the holder of that debt instrument, to be a dividend.”.

(2) Subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of any amount of interest incurred in terms of any debt instrument issued or used—

(a) on or after that date; and

(b) on or before 31 December 2013,

where that debt instrument was issued or used for the purposes of procuring, facilitating or funding the acquisition of an asset in terms of a reorganisation transaction entered into on or after 3 June 2011.

Amendment of section 23K in Act 58 of 1962

xx. (1) Section 23K of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of “acquiring company” of the following definition:

“ **‘acquiring company’** means—

(a) a resultant company contemplated in the definition of ‘amalgamation transaction’ in section 44(1);

(b) a transferee company contemplated in the definition of ‘intra-group transaction’ in section 45(1); or

(c) a holding company contemplated in the definition of ‘liquidation distribution’ in section 47(1);”; and

(b) by the substitution in subsection (1) for the definition of “reorganisation transaction” of the following definition:

“ **‘reorganisation transaction’** means—

(a) an amalgamation transaction as defined in section 44(1) to which section 44 applies;

(b) an intra-group transaction as defined in section 45(1) to which section 45 applies; or

(c) a liquidation distribution as defined in section 47(1) to which section 47 applies.”.

(2) Subsection (1) is deemed to have come into operation on 3 August 2011 and applies in respect of any amount of interest incurred in terms of any debt instrument issued or used—

(a) on or after that date; and

(b) on or before 31 December 2013,

where that debt instrument was issued or used for the purposes of procuring, facilitating or funding the acquisition of an asset in terms of a reorganisation transaction entered into on or after 3 August 2011.