

## Insertion of section 8EA in Act 58 of 1962

xx. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 8E of the following section:

### **“Dividends on third-party backed shares deemed to be income in relation to the recipient thereof**

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

**‘enforcement right’** in relation to a share means any right, whether fixed or contingent, of the holder of that share or of any person that is a connected person in relation to that holder to require any person other than the issuer of that share to—

(a) acquire that share from the holder;

(b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or

(c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

**‘enforcement obligation’** in relation to a share means any obligation, whether fixed or contingent, of any person other than the issuer of that share to—

(a) acquire the share from the holder of that share;

(b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or

(c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

**‘equity share’** means any share that carries a limited right to participate beyond a specified amount in a distribution;

**‘third-party backed share’** means any share in respect of which an enforcement right is exercisable or an enforcement obligation is enforceable as a result of any amount of any specified dividend or foreign dividend attributable to that share not being received by or accruing to the person holding that share: Provided that, where the consideration received by or accrued to the issuer of a share which, but for this proviso, would have constituted a third-party backed share was used by that issuer to acquire an equity share in a target company—

(i) in determining whether an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that share has an enforcement right in respect of that share and that right is exercisable only against—

(aa) that target company or any other company that forms part of the same group of companies as that target company; or

(bb) any company that forms part of the same group of companies as that issuer; and

(ii) in determining whether an enforcement obligation is enforceable in respect of that share, no regard must be had to any arrangement in terms of which—

(aa) that target company or any other company that forms part of the same group of companies as that target company; or

(bb) any company that forms part of the same group of companies as that issuer, has an enforcement obligation in respect of that share and that obligation is enforceable by the holder of that share; and

**‘target company’** means a company that is a resident.

(2) Any dividend or foreign dividend received by or accrued to a person in respect of a third-party backed share which is received or accrued on or after the date that the share becomes a third-party backed share must be deemed in relation to that person only to be an amount of income received by or accrued to that person.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of dividends and foreign dividends received or accrued on or after that date.