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GOVERNMENT NOTICE

NATIONAL TREASURY

No. R. 255

28 March 2012

REGULATIONS PRESCRIBING THE CIRCUMSTANCES UNDER WHICH SECTION 23K(2) OF THE INCOME TAX ACT, 1962, DOES NOT APPLY

The Minister of Finance under section 23K(9) of the Income Tax Act, 1962 (Act No. 58 of 1962), hereby makes the regulations set out in the Schedule hereto.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962 (Act No. 58 of 1962), bears the meaning so assigned, and—

“**group of companies**” means a group of companies as defined in section 41 of the Act;

“**interest**” means interest as defined in section 24J of the Act;

“**reorganisation debt instrument**” means any debt instrument issued or used directly or indirectly—

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

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

paragraph (a);

“transferor company” means -

- (a) a transferor company as contemplated in section 45(1)(a); or
- (b) a liquidating company as contemplated in section 47(1)(a); and

“the Act” means the Income Tax Act, 1962 (Act No. 58 of 1962).

Circumstances under which section 23K(2) of the Act, does not apply

2. Section 23K(2) of the Act does not apply in respect of any interest incurred by an acquiring company in terms of a reorganisation debt instrument during any period during which—

- (a) the holder of the reorganisation debt instrument and the issuer of the reorganisation debt instrument form part of the same group of companies;
- (b) the funding of the reorganisation debt instrument is not directly or indirectly derived from any person that does not form part of the same group of companies;
- (c) the holder of the reorganisation debt instrument is not an insurer as defined in section 29A(1) of the Act; and
- (d) the holder of the reorganisation debt instrument is not a bank as defined in section 37I(1) of the Act.

Reorganisation debt instruments to which section 23K(2) does not apply

3. Section 23K(2) of the Act does not apply in respect of any interest incurred by an acquiring company in terms of a reorganisation debt instrument to the extent that the reorganisation debt instrument constitutes an assumption by the acquiring company of a debt of the transferor company that -

- (a) was not incurred by the transferor company for the purpose of procuring, enabling, facilitating or funding the acquisition by the acquiring company of an asset in terms of that reorganisation transaction; and
- (b) was incurred by that transferor company-
 - (i) more than 18 months before that reorganisation transaction has been entered into; or

- (b) was incurred by that transferor company-
- (i) more than 18 months before that reorganisation transaction has been entered into; or
 - (ii) within a period of 18 months before that reorganisation transaction has been entered into, to the extent that the debt—
 - (aa) constitutes the refinancing of any debt incurred as contemplated in subparagraph (i); or
 - (bb) is attributable to and arose in the normal course of a business undertaking disposed of, as a going concern, to that acquiring company as part of that reorganisation transaction.

Short title and commencement

4. These regulations are called the Regulations prescribing the circumstances under which section 23K(2) of the Income Tax Act, 1962, does not apply and apply in respect of reorganisation transactions entered into on or after 31 March 2012.



PRAVIN JAMNADAS GORDHAN
MINISTER OF FINANCE

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