

Annexure B

DRAFT

Insertion of section 8FA in Act 58 of 1962

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

“Hybrid interest deemed to be dividends

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

‘**hybrid interest**’ means any interest in respect of a debt owed by any company that is a resident if—

(a) the amount of that interest is not determined with reference to—

- (i) a specified rate of interest; or
- (ii) the time value of money; or

(b) the obligation to pay any amount owing in respect of that interest is conditional upon the solvency of that company.

(2) Any amount of hybrid interest—

(a) is deemed for purposes of this Act to be a dividend declared by the company;

(b) is not deductible in terms of this Act; and

(c) must not be included in gross income in terms of section 24J.

(3) This section does not apply to any interest in respect of a debt—

(a) owed to a natural person that is a resident by a profit company as contemplated in the Companies Act that is not a public or state-owned company as contemplated in the Companies Act; or

(b) that constitutes a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012), owed by a bank as defined in section 1 of that Act to any person that is not a connected person in relation to that bank.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of amounts incurred or accrued on or after that date.