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25 November 2024

To: The National Treasury
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0001

The South African Revenue Service
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Via email:	National Treasury	(2025AnnexCProp@treasury.gov.za); and
	SARS	(acollins@sars.gov.za)

RE: ANNEXURE C PROPOSALS: SAIT INTERNATIONAL TAX TECHNICAL WORK GROUP

Dear Colleagues,

We attach the Annexure C proposals from the SAIT International Tax Technical Work Group (the WG), as it pertains to technical proposals for possible inclusion in Annexure C of the 2025 Budget Review.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate. Please do not hesitate to contact us should you need further information.

Yours sincerely

SAIT International Tax Technical Work Group

Unless otherwise indicated, all references to sections are to sections of the Income Tax Act, No. 58 of 1962 (the Act)

1. Group roll over relief and loop structures

1.1. Background

1.1.1. The legal issue at hand involves the group rollover relief provisions within the context of loop structures. These provisions are designed to allow corporate groups to reorganise without immediate tax consequences on certain intra-group transactions. However, the current provisions have not kept pace with the relaxations in exchange control regulations, particularly regarding loop structures. Loop structures involve South African residents holding interests in offshore entities that, in turn, hold assets in South Africa. The existing group rollover relief provisions do not adequately accommodate these scenarios, leading to potential tax inefficiencies and complexities.

1.2. The legal nature of the problem

1.2.1. The group rollover relief provisions, as outlined in sections 41 to 47 of the Act allows for tax-neutral transfers of assets within a group of companies under specific conditions. These provisions are intended to facilitate corporate reorganisations without triggering immediate tax liabilities. However, the definition of a “group of companies” under section 41 of the Act is narrow and does not extend to loop structures where assets are held indirectly through offshore entities.

1.2.2. For example, if a South African company (SACo 1) transfers assets to another South African company (SACo 2) within the same group, the transaction can be tax-neutral. However, if SACo 1 holds these assets through an offshore holding company (OffshoreCo), which then transfers the assets back to SACo 2, the transaction may not qualify for rollover relief due to the involvement of OffshoreCo. This creates a tax inefficiency, as the same economic group is subject to different tax treatments based on the structure of the transaction.

1.2.3. The problem is further compounded by the fact that the policy intent of the rollover provisions is clear: to allow for tax-neutral reorganisations within a group. However, this intent is not realised in practice when loop structures are involved. The narrow definition of a group of companies breaks down when assets move outside South Africa and back in, leading to unintended tax consequences. Numerous examples exist where restructures within the same group could be tax-neutral with no loss to the fiscus, but the current rules do not cater for these scenarios.

1.3. The nature of the business / persons impacted

1.3.1. South African-resident shareholders and corporate groups that utilise loop structures for holding assets for various commercial non-tax driven reasons (e.g. acquisition of existing foreign owned groups which incorporate South African subsidiaries, foreign investor preference, capital attraction etc). These include multinational corporations with complex organisational structures involving both South African and offshore entities. The current provisions create tax inefficiencies and complexities for these groups, potentially leading to higher tax liabilities and administrative burdens.

1.4. Proposal

1.4.1. To address these issues, we recommend that the group rollover relief provisions be amended to provide greater flexibility and clarity for transactions involving loop structures. Specifically, the following changes should be considered:

1.4.1.1. **Widening the Definition of a Group of Companies**: Amend the definition of a group of companies under section 41 to include loop structures where assets are held indirectly through offshore entities. This would ensure that tax-neutral treatment is available for all intra-group transactions, regardless of the involvement of offshore entities.

1.4.1.2. **Aligning with Exchange Control Relaxations**: Update the rollover relief provisions to reflect the current exchange control regulations, which have gradually relaxed restrictions on loop structures. This alignment would facilitate smoother corporate reorganisations and reduce tax inefficiencies.

1.4.1.3. **Providing Clear Guidelines**: Issue detailed guidelines to clarify the application of the rollover relief provisions in the context of loop structures. This would help taxpayers and tax professionals understand the requirements and ensure consistent application of the rules.

1.4.2. By implementing these changes, the legislation would better reflect the economic realities of modern corporate structures and provide a more equitable and efficient tax framework for South African-resident shareholders and corporate groups. This would ultimately support the policy intent of facilitating tax-neutral reorganisations within groups, while ensuring that the South African tax base is protected.

2. Review of CFC Anti-Loop Rules: Disproportionate Tax Burden on Individual and Trust Shareholders and Resident companies

2.1. The legal nature of the problem

2.1.1. In South Africa, the anti-loop rules regarding Controlled Foreign Companies (CFCs) were introduced in 2021 to address situations involving CFCs and loops. We understand that the primary objective was to prevent tax avoidance by ensuring that the lower dividend withholding tax under a treaty would be grossed up, maintaining an effective tax rate of 20%, regardless of the reduced treaty rate. However, the implementation of these rules continues to result in unintended consequences.

2.2. A detailed factual description

2.2.1. The ratio used in the CFC rules, which partially removed the exemption from sections 10(1)(k)(i) of the Act is particularly problematic.

2.2.1.1. <u>Resident companies</u>

2.2.1.1.1. This ratio is also applied to companies rather than trusts or individuals.

2.2.1.1.2. The inclusion of part of the dividend in section 9D in the context of South African resident individuals and trusts is understandable since these beneficial owners are in terms of local law subject to dividends tax at 20%. Had it not been for section 9D(2)(d), individuals and trusts would benefit from an exemption from dividends tax purely because they hold the shares in South African companies through a controlled foreign company.

2.2.1.1.3. The inclusion of part of the dividend in section 9D in the context of South African resident companies (and other dividends tax exempt beneficial owners) does not make sense. Had these entities exempt from dividends tax held the shares in the local companies directly (and not through a controlled foreign company), the dividends would have been exempt from dividends tax, but now they have to pay an effective 20%.

2.2.1.2. <u>Resident individuals and trusts</u>

2.2.1.2.1. By way of example,

- if a CFC is owned by a company and the withholding tax is 5%, an additional tax under the CFC rules would effectively be imposed, resulting in an effective tax rate of 20%, ie the shareholder paying tax at 27% on the taxable income of the CFC would effectively pay a further 15%. To achieve this partial removal of the exemption the dividend is inter alia multiplied by the ratio 20:27
- However, when the shareholder is an individual or a trust, the non-exempt amount is multiplied by 45% instead of 27%, leading to an effective tax rate on dividends exceeding 30%.

2.2.1.2.2. The latter outcome is not merely an anti-avoidance measure (as was originally intended) to reclaim avoided dividends tax; it is punitive and disadvantages shareholders who are individuals or trusts. Essentially, the legislation fails to differentiate between the ratios applicable to companies and those applicable to trusts or individuals, which would ensure the effective aggregate tax rate remains at 20%.

2.2.1.2.3. Whilst we appreciate that this discrepancy was previously addressed in the CFC rules concerning capital gains, the explanation provided in the explanatory memorandum was unclear. The explanatory memorandum of 2021 inadequately attempted to justify the retention of the higher effective tax rate attributed to individual shareholders. Furthermore, it attempted to explain that the higher rate was necessary to prevent tax avoidance and ensure that the effective tax rate remained consistent with the overall tax policy objectives. The lack of clarity in the memorandum led to confusion and criticism from taxpayers and tax professionals.

2.2.1.2.4. Notwithstanding this, the previous rule was retained *inter alia* for individual policyholder funds held by long-term insurers, justified on the grounds that it affects savings. However, this justification is flawed as savings are impacted regardless of whether they are held by a fund, an individual, a trust, or a company. The current anti-avoidance rule, intended to top up the effective tax rate to 20%, instead results in a tax rate in excess of 30%, which we argue is not a measure to counteract avoidance; it is, in fact, illogical and blatantly punitive.

2.3. The nature of the business / persons impacted

2.3.1. South African resident companies that are shareholders of a CFC (refer 2.2.1.1)
2.3.2. South African resident individuals or trusts that are shareholders of a CFC (refer 2.2.1.2)

2.4. Proposal

2.4.1. It is essential to recognise that this approach is not merely punitive but also counterproductive. National Treasury's stance not to amend the legislation to reflect more suitable ratios for different types of shareholders contributes to the ongoing challenges with the current approach. We firmly propose that this position be revisited and revised in order to ensure a fair and logical tax system that does not disproportionately penalise certain taxpayers. The current state of the anti-loop rules and CFC regulations highlights the need for a more nuanced and equitable approach to tax policy. Current practice has become punitive rather than it merely being a case of protecting the tax base to enable the fiscus to receive what should have been received or imputed to the South African tax resident.

2.4.2. <u>Resident companies</u>

2.4.2.1. A proviso can be added to section 9D(2)(d) as follows:

"Provided that section 9D(2)(d) does not apply if the dividend would have been exempt in terms of section 64F(1) had the resident that directly or indirectly holds any participation rights in the controlled foreign company been the beneficial owner of the dividend."

2.4.3. <u>Resident individuals and trusts</u>

2.4.3.1. The solution is simple: in item "B" in the formula in proviso (d) to section 9D(2A) of the Act the current ration should apply only to shareholders that are companies, and the ratio of 20 to 45 should apply to other taxpayers.

3. Section 23M

[Applicable provisions: Section 23M of the Act]

3.1. Background

3.1.1. Section 23M was inserted into the Act in 2013. At the time, the Explanatory Memorandum stated that section 23M was an additional tool to deal with base erosion caused by excessive debt (and thus excessive interest) where a SA resident person deducted an interest expense but the corresponding interest income was received by or accrued to an exempt person.

3.1.2. Section 23M has undergone various amendments since 2013. Three amendments relevant to this submission are:

- The definition of "interest" in section 23M(1) initially only included interest as defined in section 24J. In 2021, this definition was extended to include various other items, including, at paragraph (c), "amounts taken into account in determining taxable income in terms of section 24I(3) and (10A)". In other words, "interest" was extended to include foreign exchange gains and losses.
- With effect from years of assessment commencing on or after 31 March 2023, the definition of "debt" was inserted, namely that it "includes any amount in respect of which interest is determined or incurred, and such amount must be regarded as owed, but does not include a tax debt as defined in section 1(1) of the Tax Administration Act." As will be seen below, important in this definition are the words "must be regarded as owed".
- With effect from years of assessment commencing on or after 1 January 2024, the definition of "creditor" was inserted, namely "a person to whom a "debtor" owes a "debt"".

3.2. The legal nature of the problem

3.2.1. These amendments have the absurd effect that a foreign exchange loss on an asset (e.g. a loan receivable or a trade debtor) may be disallowed by section 23M, whilst the section is actually aimed at excessive debt, i.e. liability. This outcome is arrived at by the application of the definitions of "creditor", "debt" and "debtor".

- A SA resident person will be a "debtor" if that person incurs an amount of interest, including a foreign exchange loss. It is not concerned with whether that foreign exchange loss is incurred on an asset or a liability.
- "Debt" would include an amount in respect of which interest is incurred and such amount must be regarded as owed. Therefore, the "amount" may be an asset but through the application of the definition would be regarded as owed and thus regarded as a liability.
- A "creditor" is simply a person to whom a "debtor" owes a "debt". This definition was inserted because in its absence the word creditor would have carried its ordinary meaning, namely a person to whom an amount is owed (i.e. who holds the asset). Now, through the application of the definitions, the person may actually owe an amount (i.e. hold the liability) and be regarded as a creditor.

3.3. A detailed factual description

3.3.1. Company A holds 100% of the equity shares in Company B and Company B holds 100% of the equity shares in Company C. The shareholders of Company A are D (holding 55% of the equity shares) and E (holding 45% of the equity shares).

3.4. The nature of the business / persons impacted

3.4.1. **Example A**

3.4.1.1. A simple example of the effect is where a SA resident company sells goods in a foreign currency to an offshore connected person on credit. The SA resident company records a trade debtor (asset) until the goods are paid for. Where the Rand appreciates, there will be a foreign exchange loss incurred on the trade debtor and this may be treated as non-deductible in terms of section 23M. This may be illustrated with numbers as follows:

- The SA company sells goods for $1 million when the exchange rate is R19 : $1.
- The SA company recognizes revenue of R19 million and a trade debtor (asset) of R19 million.
- If the Rand appreciates to R17,50 : $1 by the time of payment, then the SA company would receive $1 million that it would exchange with its bank for R17,5 million and it would recognize a foreign exchange loss of R1,5 million.
- The accounting entries for all these transactions would be:

DR Debtor:	R19 million
CR Revenue:	(R19 million)

(Sale of goods for $1 million when exchange rate is R19 : $1)

DR Bank:	R17,5 million
DR Foreign exchange loss:	R1,5 million
CR Debtor:	(R19 million)

(Receive payment of $1 million when exchange rate is R17,50 : $1)

3.4.1.2. Due to a foreign exchange loss, as thus "interest" being incurred, section 23M would apply to regard the trade receivable as an amount owed, i.e. trade receivable is essentially deemed to be a trade payable.

3.4.1.3. The taxpayer would include the R19 million revenue in its gross income which would filter to taxable income. However, the taxpayer only received cash of R17,5 million and may be denied a deduction of the R1,5 million foreign exchange loss in terms of section 23M despite the fact that the underlying instrument is an asset and not a liability.

3.4.1.4. This creates a mismatch between the cash received (R17,5 million) and the amount that is taxable (i.e. R19 million taxable, assuming the full R1,5 million is denied as a deduction through the application of section 23M).

3.4.2. **<u>Example B:</u>**

3.4.2.1. A further example illustrates the contraction is where a SA resident company makes a foreign currency denominated loan to an offshore connected person. The SA resident company would record a loan receivable (asset). Where the Rand appreciates, there will be a foreign exchange loss incurred and this may be treated as non-deductible in terms of section 23M. This may be illustrated with numbers as follows:

- The SA company makes a loan of $1 million when the exchange rate is R19 : $1. The SA company therefore records a loan of R19 million.
- Assume the SA company earns interest income of $100,000 on the loan receivable (asset) and translates this interest to Rands at the relevant exchange rate.
- If the Rand appreciates to R17,50 : $1 by year end, then the SA company would revalue the loan receivable to R17,5 million and it would recognise a foreign exchange loss of R1,5 million.
- The accounting entries for all these transactions would be:

DR Loan receivable:	R19 million
CR Bank:	(R19 million)

(Make a loan of $1 million when exchange rate is R19 : $1)

DR Foreign exchange loss:	R1,5 million
CR Loan receivable:	(R1,5 million)

(Revalue loan at year end when exchange rate is R17,50 : $1)

3.4.2.2. For purposes of section 23M, the SA company's loan receivable would remain a loan receivable in relation to the actual interest income. However, in relation to the foreign exchange loss, the loan receivable (asset) would be regarded as an amount owed, i.e. the loan receivable (asset) would be regarded as a loan payable (liability).

3.4.2.3. Taking the example further, if the loan was repaid to the company on the first day of the next year, the company would receive $1 million and would exchange this with its bank for R17,5 million. The company would thus have made a realized foreign exchange loss of R1,5 million. However, due to the application of section 23M this foreign exchange loss (on an asset) may be non-deductible.

3.4.3. **<u>Final analysis and conclusion</u>**

3.4.3.1. One may appreciate the purpose of a provision that seeks to deny excessive interest deductions based on excessive debt (i.e. <u>liability</u>) in a SA company where the counterparty is not subject to SA tax on the income. However, section 23M is very problematic in its application to <u>assets</u> for the following reasons:

3.4.3.1.1. It is irrational to deny a deduction for foreign exchange losses on an asset when the legislation is aimed at preventing excessive debt, i.e. liability.

3.4.3.1.2. A taxpayer does not have any control over the exchange rate and may therefore be prejudiced by matters entirely beyond its control. It is well known that the Rand fluctuates considerably in both directions against the major currencies.

3.4.3.1.3. Where a SA resident sells goods to a foreign market, it must be considered beneficial to the South African economy. It is irrational to expose that SA resident to a limitation on the deduction of foreign exchange losses on its assets.

3.5. Proposal

3.5.1. In order to correct this situation, the following is proposed:

- Paragraph (c) of the definition of interest in section 23M is deleted so that foreign exchange gains and losses are not treated as interest for purposes of section 23M.

- Alternatively, amendments should be made so that only foreign exchange losses on debt owed (i.e. liabilities) would be subject to the potential limitation of section 23M. This may be achieved by the following amendments:

  "**debt**" includes any debt owed by a person in respect of which interest is determined or incurred, ~~and such amount must be regarded as owed~~, but does not include a tax debt as defined in section 1(1) of the Tax Administration Act…

  "**debtor**" means a person that incurs an amount of interest on a debt owed by that person and –
  (a) is a resident; or
  (b) in the case of a person that is not a resident, owes a debt that is effectively connected with a permanent establishment of that person in the Republic…

4. Subsections 24I(2) and (3A) of section 24I of the Act

4.1. Background

4.1.1. The provisions of section 24I of the Act were amended by the Taxation Laws Amendment Act, 2024 to include subsection (3A) applicable to taxpayers that are companies and do not trade during a year of assessment.

4.2. Legal nature of the problem

4.2.1. The wording of subsection (2) is unclear in terms of what is meant by "… a company that is not carrying on a trade during a year of assessment". The latter could be interpreted on the following bases: (i) subsection (2) excludes a company that did not trade for an entire year of assessment; or (ii) subsection (2) excludes a company that ceased to trade during a year of assessment (in other words it traded for a part of the year of assessment).

4.3. Taxpayers that are impacted

4.3.1. Any South African tax resident company that has foreign currency debtors or creditors and ceases to trade.

4.4. **Proposal**

4.4.1. It is our understanding that the intention of the provision is that companies that have not traded for an entire year of assessment be excluded from the provisions of subsection (2) and that the provisions of subsection (3A) then find application. In order to place this interpretation beyond doubt, the following proposal is made:

4.4.2. Subsection (2) to read as follows:

"In determining the taxable income, **for a year of assessment** of any person contemplated in subsection (2), there shall be included in or deducted from the income, as the case may be, of that person-

(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsection (10A); and
(b)(i) any premium or like consideration received by, or paid by, such person in terms of a foreign currency option contract entered into by such person; or
(b)(ii) any consideration paid by such person in respect of a foreign currency option contract acquired by such person.

Provided that the provisions of this subsection shall not apply to any company that did not carry on a trade throughout that year of assessment."

4.4.3. Amendments will need to be made to subsection (3A) that are consequential on the proposed amendments to subsection (2) as follows:

"(3A) In determining the taxable income of a company, **for a year of assessment, in circumstances where that company did not carry on a trade throughout that year of assessment** and where-

(a) the aggregate amount of foreign exchange gains **determined in accordance with this section** and premiums or like consideration received in terms of foreign currency option contracts exceeds the aggregate amount of foreign exchange losses **determined in accordance with this section**, premiums or like consideration paid in terms of foreign currency option contracts and consideration paid in respect of foreign currency option contracts, there must, subject to subsection (10A), be included in the income of that company the net amount of the excess; or
(b) the aggregate amount of foreign exchange losses **determined in accordance with this section**, premiums or like consideration paid in terms of foreign currency option contracts and consideration paid in respect of foreign currency option contracts exceeds the aggregate amount of foreign exchange gains **determined in accordance with this section** and premiums or like consideration received in terms of foreign currency option contracts, the net amount of the excess **must be deemed to be an exchange loss of that company determined in terms of this section in the immediately succeeding year of assessment."**

5. Amendments to section 23N

5.1. Background

5.1.1. The provisions of section 23N are proposed to be amended so as to remove the current formula that applies to limit the quantum of interest deducted and replace this with a fixed 30% of Adjusted Taxable Income. The proposed amendment comes into effect on 1 January 2027 and applies in respect of year of assessment commencing on or after that date.

5.2. Legal nature of the problem

5.2.1. The mere fact that the debt limitation rules of section 23N are roughly similar to the debt limitation rules of section 23M should not automatically result in both rules being identical. Each section serves a different purpose and should be drafted for such purpose.

5.2.2. Section 23M relates to debts owing to persons who are not subject to tax. National Treasury published an extensive publication (dated 26 February 2020), entitled *"Reviewing the tax treatment of excessive debt financing, interest deductions and other financial payments"*. Several factors were raised in the publication in terms of the need for the fiscus to manage excessive interest deductions which ultimately resulted in the change to section 23M. Some of the more material considerations are (at page 3):

- The deduction of interest payments being more valuable in countries with higher tax rates, thereby providing multi-nationals with the ability to place most of their debt in high tax countries.
- Debt capital can create opportunities for base erosion and profit shifting (BEPS) in South Africa given the relatively high tax rate in South Africa compared to the global average. The OECD/G20 BEPS Project produced a report on "*Limiting Base Erosion Involving Interest Deductions and Other Financial Payments*" in 2015 providing a benchmark against which to assess the existing corporate tax regime in respect of its potential impact on the choice between debt and equity financing.
- The OECD/G20 Project considered as a consensus recommendation to curtail BEPS by applying a fixed percentage of EBITDA, particular to base erosion.
- The application of the fixed EBITDA approach by the SA government in 2021, in terms of the OECD approach, provides a more uniform approach to interest payment flowing out of the country and enhances the level of base protection.

5.2.3. Most transactions to which section 23N applies (involving sections 24O, 45 and 47 transactions) are funded by local banks or funding within the group of companies. In a domestic context where the creditor is subject to tax, the section 23N limitation in its current form achieves the desired result.

5.2.4. The receipt of interest payments will be taxable in the creditors' hands, without eroding the tax base. In a cross-border context or where the creditor is not subject to tax, section 23M works as a backstop since section 23M applies in addition to section 23N.

5.2.5. Furthermore, the commentary on the introduction of section 23N provided in the 2013 Explanatory Memorandum on the Tax Laws Amendment Bill noted that there was a special rule on upward adjustments for periods of high interest rates. NT had noted that the 40 per cent deduction limitation assumed relatively low national interest rates. The proposed amendment in the 2024 TLAA effectively contradicts this view in a market with high interest rates.

5.2.6. The purpose of section 23N is to limit a company's total interest deduction to an amount that represents a reasonable amount of debt provided by a South African bank for the purpose of funding an acquisition that is:

- reasonably priced (at 5 to 8 times EBITDA);
- reasonably geared by senior debt, in accordance with normal lending trends of the South African banks (and not by subordinated mezzanine or high-yielding instruments); and
- where the interest rate levied on the debt is market related.

5.2.7. A 30% limitation is not market-related as it does not align with the normal arm's-length lending trends of the South African banks. It will distress companies in times of high interest rates, when GDP growth is low and trading conditions are difficult, and it will be too generous in times of low interest rates.

5.2.8. To demonstrate this, we set out below an example of a moderately priced deal that is funded by a normal amount of senior debt from a South African bank. Assumptions:

- Target has a current EBITDA of R100m;
- A private equity fund (Fund) acquires Target for R700m (based on a reasonable EBITDA multiple of 7);
- The capital structure for the deal is as follows:

Share capital	R300m
Senior debt from a South African bank	R400m
Acquisition Price	R700m

- The interest rate levied on the senior debt is 12.25% (repo rate of 8.25% +4%).

5.2.8.1. The interest limitation calculated using the existing formula in section 23N(4):

40× 8.25+410=49% of "adjusted taxable income"

In the first year following the acquisition and ignoring the effects of monthly compounding and any repayments, the borrower would incur interest of R400m x 12.25% = R49m, therefore no amount of interest will be disallowed.

5.2.8.2. The interest limitation if the formula is replaced with 30%:

The allowable interest will reduce to R30m, resulting in a permanent disallowance of R19m.

This will create asymmetry as the South African bank will incur corporate income tax on the full R49m of interest income.

In a low interest environment, the 30% limitation will probably be too generous. Using the same example and a repo rate of 2.5% (please refer to 5.2.8.3 below)

5.2.8.3. The interest limitation calculated using the existing formula in section 23N(4):

The company would incur interest of R400m x 6.5% (repo rate of 2.5% +4%) = R26m.

The current section 23N would limit the interest to:

40× 2.5+410=26%

This would translate into a monetary limit of R100m x 26% = R26m, and no amount of interest would be disallowed.

5.2.8.4. The interest limitation if the formula is replaced with 30%:

A 30% limitation would calculate an interest limitation of R30m (R100m x 30%), which is higher than the interest limitation of R26m calculated using the current formula. A higher level of gearing will therefore be achievable, which will erode the policy intent of the current section 23N that companies are not geared beyond the normal amount of senior debt that would be provided by a South African bank.

Many private equity funds hold portfolio companies that were acquired and funded based on the current section 23N limitation. By changing the limit to 30%, existing deals may become distressed as a result of breaching the bank covenants applicable to the senior debt - due to insufficient cash to service the senior debt (in accordance with its agreed terms).

In summary, the current section 23N formula:

- is not relevant to global shifts of debt by multinationals to benefit from the deductions in high-tax jurisdictions;
- addresses acquisitions predominantly funded by South African banks;
- aims to calculate the limit that is market-related for reasonably priced deals that are part-funded by a reasonable level of senior debt (advanced by South African banks);
- responds appropriately to interest rate changes;
- does not result in asymmetry in the tax system; and
- does not deter foreign and local private equity funds from deploying capital in South Africa.

5.3. Proposal

5.3.1. We propose that:

- Section 23N is not aligned to section 23M in respect of the quantum of allowable interest, as the lender is not tax exempt.
- The formula be left unchanged since it calculates a market-related limitation based on normal arm's-length third-party debt.

Failure to keep the formula unchanged:

- National Treasury to consider introducing a deferral of the deduction similarly to what is provided in section 23M.
- The rules should not apply retrospectively to existing debt. To that effect, the effective date should be applicable to transactions entered after 1 January 2027 rather than interest incurred on or after 1 January 2027.

End.