



*SOUTH AFRICAN REVENUE SERVICE*

**INTERPRETATION NOTE: NO. 2 (Issue 3)**

DATE: 17 March 2009

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)**

**SECTION : SECTION 11C**

**SUBJECT : FOREIGN DIVIDENDS – DEDUCTIBILITY OF INTEREST**

***Preamble***

In this Note –

- references to “**sections**”, “**subsections**”, “**paragraphs**” are to sections, subsections and paragraphs of the Act unless otherwise stated;
- “**portfolio investor**” means any person holding less than 10% of the equity share capital of a company or less than 10% of the participatory interest in a collective investment scheme; and
- the terms “**South Africa**” and “**the Republic**” are used interchangeably as they have the same meaning for purposes of this Note.

**1. Purpose**

This Note provides guidance to portfolio investors, who are natural persons, on the application of those provisions of the Act that are relevant in determining taxable income derived from foreign dividends.

Although this Note only applies to natural persons, most of the principles dealt with also apply to other taxpayers, for example, companies and trusts.

**2. Background**

Interpretation Note No. 2 (Issue 2) “Foreign Dividends – Deductibility of Interest”, issued on 28 August 2002, dealt with the application of section 9E(5A), which provided for the deduction of any interest expenditure actually incurred by any South African resident in the production of foreign dividend income, when the resident is a natural person and a portfolio investor.

Section 9E was repealed by section 23(1) of the Revenue Laws Amendment Act, No. 45 of 2003 with effect from 1 June 2004. The repeal of section 9E applies to any foreign dividend received or accrued during any year of assessment *commencing* on or after 1 June 2004. In the case of an individual, the first year of assessment commencing after 1 June 2004 is the 2006 year of assessment, which commences on 1 March 2005. Section 9E therefore applies, for example, in the case of individuals, to dividends received or accrued before 1 March 2005 (that is, to the 2005 and previous years of assessment). The date when section 9E ceases to apply to a company will depend on the company's year of assessment.

Interpretation Note No. 2 (Issue 2) is therefore still relevant to foreign dividends received by or accrued to a natural person who is a resident during the period that section 9E remains effective.

Section 9E(5A) was incorporated in section 11C. Section 11C was inserted by section 18(1) of the Revenue Laws Amendment Act, No. 32 of 2004, deemed to have come into operation on 1 June 2004 and, in so far as it relates to the deduction of any interest as contemplated in section 11C(1), (2) and (3), applicable to any interest incurred or balance of interest carried forward under section 9E(5A) to any year of assessment commencing on or after that date. Thus, section 11C took over from the date when section 9E ceased to apply. For an individual it applies to the 2006 year of assessment, namely, from 1 March 2005 to 28 February 2006. For companies the effective date will depend on the particular year of assessment.

Section 11C, which is the sole focus of this Note, provides for the deduction of any interest expenditure actually incurred in the production of foreign dividend income.

### 3. The law

Paragraph (k) of the definition of "gross income" in section 1 includes in the gross income of a person –

any amount received or accrued by way of a dividend: Provided that where any foreign dividend declared by a foreign company—

- (i) is received by or accrues to a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company'; and
- (ii) is distributed by that portfolio by way of a dividend, or a portion of a dividend, to any person who is entitled to that dividend by virtue of being a holder of any participatory interest in that portfolio,

that foreign dividend shall, to the extent that it is declared to that person as contemplated in subparagraph (ii), be deemed to have been declared by that foreign company directly to that person and to be a foreign dividend which is received by or accrued to that person;

The term "foreign dividend" is defined in section 1 of the Act as follows:

*Before introduction of dividends tax*

**"foreign dividend"** means any dividend received by or which accrued to any person from a foreign company as defined in section 9D;

*After introduction of dividends tax*

**“foreign dividend”** means any dividend, as defined prior to the coming into operation of Part VIII of Chapter II of this Act, received by or which accrued to any person from a foreign company as defined in section 9D;

The above definition comes into operation on the date on which the dividends tax contained in Part VIII of Chapter II of the Act comes into operation. Under section 56(2) of the Revenue Laws Amendment Act, No. 60 of 2008 the dividends tax comes into operation on a date determined by the Minister by notice in the *Gazette*, which date must be at least three months after the date of the notice.

The definition of a “dividend” in section 1 of the Act before the coming into operation of Part VIII of the Act, is contained in **Annexure B** to this Note.

**Definition of “foreign company” in section 9D(1)**

**“foreign company”** means any association, corporation, company, arrangement or scheme contemplated in paragraph (a), (b), (c), (e) or (f) of the definition of “company” in section 1, which is not a resident;

**Definition of “listed company” in section 1**

**“listed company”** means a company where its shares or depository receipts in respect of its shares are listed on—

- (a) an exchange as defined in section 1 and licensed under section 10 of the Securities Services Act, 2004; or
- (b) a stock exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of “recognised exchange” in paragraph 1 of the Eighth Schedule;

**Section 11C**

**11C. Deductions in respect of foreign dividends.**—(1) In determining the taxable income of a person for a year of assessment which is derived from any foreign dividends received by or accrued to that person during that year, there shall be allowed as a deduction any interest actually incurred by that person during that year in the production of income in the form of foreign dividends.

(2) The amount of the deduction under subsection (1) is limited to the amount of foreign dividends which are included in the income of the person during the year of assessment.

(3) The amount by which the interest referred to in subsection (1) exceeds the amount of the foreign dividends referred to in subsection (2) (if any), must be reduced by the amount of any foreign dividends received by or accrued to that person during the year of assessment which are exempt from tax and the balance must—

- (a) be carried forward to the immediately succeeding year of assessment; and
- (b) be deemed to be an amount of interest actually incurred by that person during that succeeding year of assessment in the production of income in the form of foreign dividends.

## 4. The application of the law

### 4.1 Inclusion of foreign dividends in gross income

South African residents are, but for certain exclusions or exemptions, liable to income tax on their worldwide income, that is, income derived from sources within and outside South Africa. For the purposes of the Act any dividend received by or which accrued to a resident from a foreign company is a “foreign dividend”, as defined in section 1.

Under paragraph (k) of the definition of “gross income” in section 1, a foreign dividend is included in the gross income of a person. This inclusion is determined before the deduction of any foreign withholding tax. Any withholding tax is accounted for by way of a rebate or deduction under section 6quat.

### 4.2 Calculating income derived from foreign dividends

In certain circumstances foreign dividends included in gross income may be exempt from tax under the Act. Those foreign dividends included in gross income which are not exempt from tax, are for purposes of this Note referred to as taxable foreign dividends. In order to calculate income derived from foreign dividends the following formula must be applied:

	R
Gross income	
• Foreign dividends – taxable and exempt	XXX
Less:	
• Foreign dividends – exempt	(XXX)
Income derived from foreign dividends	<u>XXX</u>

#### 4.2.1 Exemption for foreign dividends – section 10(1)(k)(ii)

Section 10(1)(k)(ii) provides for a number of exemptions for foreign dividends which form part of a person’s gross income if certain conditions are met. The following exemptions are of particular importance to an individual who is a portfolio investor:

- a. A foreign dividend will be exempt from income tax when the underlying profits from which it is distributed –
  - relate to any amount that has been, or will be, subject to tax in South Africa under the Act.

This exemption is not, however, available when the underlying profits have been or will be exempt, or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation (section 10(1)(k)(ii)(aa)(A))

#### **Example 1 – Foreign dividend exempt when declared out of profits taxed in South Africa**

##### *Facts:*

A foreign company with a South African shareholder derives rental income from immovable property located in South Africa. The net rental income derived by the foreign company is subjected to normal tax in South Africa as the Act subjects

income, derived from a South African source by a person who is not a resident, to income tax.

*Result:*

If the company declares a dividend to its South African shareholder from the net rental income that was subject to income tax in South Africa, the dividend will be exempt from South African tax.

- A foreign dividend will be exempt if it arose directly or indirectly from any dividends declared by any company which is a resident in South Africa (section 10(1)(k)(ii)(aa)(B)).

**Example 2 – Foreign dividend exempt when declared out of dividends derived from South African-resident company**

*Facts:*

UK Co, a United Kingdom company, holds 100% of the shares in SA Co, a South African resident. During the year SA Co declares a dividend of R100. The dividend is the only income of UK Co. UK Co in turn declares a dividend of R90 to its shareholders. X, a South African resident, holds 5% of the shares in UK Co.

*Result:*

The foreign dividend will be exempt from income tax in the hands of X because it arose from dividends declared by a company which is resident in South Africa.

- b. A foreign dividend will be exempt to the extent that it relates to any amount which was declared by a listed company which complies with both paragraphs (a) and (b) of the definition of “listed company” in section 1 (section 10 (1)(k)(ii)(bb)).<sup>1</sup>

**Example 3 – Foreign dividend exempt when declared by dual-listed company**

*Facts:*

A company, listed on both the JSE and the London Stock Exchange declares a dividend to its shareholders.

*Result:*

The dividend is exempt from tax because the company declaring the dividend has a dual listing.

#### 4.2.2 Basic investment income exemption – section 10(1)(j)(xv)

Section 10(1)(j)(xv) provides for a basic investment income exemption, which is determined under a two-step process. The first part of the exemption applies to

<sup>1</sup> An additional requirement that South African residents must own in aggregate more than 10% of the equity share capital of the foreign company declaring the dividend was deleted by s 9(d) of the Taxation Laws Amendment Act, No. 3 of 2008. The deletion is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

foreign dividends and interest from a source outside South Africa. The second part of the exemption deals with local taxable dividends and South African-sourced interest.

*The foreign dividend and non-South African source interest exemption (section 10(1)(i)(xv)(aa))*

A maximum of R3 200 is available for foreign dividends and foreign-sourced interest. For the 2010 year of assessment it is proposed that the amount be increased to R3 500. This limitation applies to foreign dividends first after which the balance, if any, is applied against any foreign-sourced interest. Any foreign dividends which are exempt from income tax under section 10(1)(k)(ii) must first be deducted from a natural person's gross income from interest and dividends before applying the basic exemption. The portion of any foreign dividends and foreign-sourced interest which exceed R3 200 during the 2009 year of assessment will be fully taxable.

*The local dividend and interest exemption (section 10(1)(i)(xv)(bb))*

Section 10(1)(i)(xv)(bb) provides for a basic exemption for –

- interest received or accrued from a South African source, and
- dividends (other than foreign dividends) which are not otherwise exempt from tax.

The basic investment exemption is as follows:

	Year of assessment	
	2010	2009
<b>Status on last day of year of assessment</b>	R	R
Persons 65 years or older	30 000	27 500
Persons younger than 65 years	21 000	19 000

If and to the extent the exemption for foreign dividends and foreign-sourced interest is used under section 10(1)(i)(xv)(aa), the above amounts must be correspondingly reduced. Thus, for the 2009 year of assessment a person who is at least 65 years of age who has, say R2 500 in foreign dividends will have an amount of R25 000 (R27 500 – R2 500) available as an exemption for any South African-sourced interest and taxable local dividends.

### 4.3 Determining taxable income derived from foreign dividends

#### 4.3.1 The deductibility of interest expenditure in general

Any dividend income received by a passive investor in foreign shares does not represent trading income. As a result any interest expenditure incurred on money borrowed to purchase foreign shares will not be deductible under the general deduction formula in section 11(a) read with section 23(g). This is because these sections require expenditure to be incurred in the course of carrying on a trade.

A special dispensation has been created for foreign dividends under section 11C, which allows for the deduction of interest when the interest does not qualify for a deduction under any other provision of the Act. Section 11C provides for a deduction of interest incurred in the production of income derived from foreign dividends. In order to qualify as a deduction under section 11C, the interest expense must relate *directly* to the relevant foreign dividends. In other words, the relevant borrowings

must have been used specifically to purchase the foreign shares from which the foreign dividends have been or will be earned.

It is irrelevant whether the interest expense relates either to exempt foreign dividends or taxable foreign dividends. Should the foreign dividends consist of both a taxable and an exempt part, it is not required that the interest expense be dissected between the two parts. This will also be the case if the full amount is exempt from tax. The full amount of the interest expense will be deductible in the year of assessment in which it is incurred or in a subsequent year of assessment.

The term “income in the form of foreign dividends”, as used in section 11C(1), must be interpreted to mean the gross amount of the foreign dividends; in other words, “gross income in the form of dividends” and not “income” as defined in section 1. Under section 11C(2) the interest deduction for a year of assessment is limited to the amount of *foreign dividends included in income* during that year. In this context the term “income” means “income” as defined in section 1.

If for a particular year of assessment, say year 1, the sum of the qualifying interest expense exceeds the income derived from foreign dividends, the excess portion of the interest may qualify as a deduction in year 2 against income derived from foreign dividends during year 2 (see **Example 7**). However, the excess amount of interest must first be reduced by the amount of foreign dividends that are exempt from tax during that year of assessment.

The balance of excess interest remaining after the deduction of the exempt foreign dividends, is carried forward to the immediately succeeding year of assessment and regarded as interest actually incurred in the production of foreign dividend income derived during that year (section 11C(3)). If the amount carried forward to the following year is not used in that year (year 2) it may be carried forward to year 3 and will qualify as a deduction in year 3.

Although the wording of section 11C(1) seems ambiguous in this respect SARS will not seek to disallow the carry-forward of interest when no foreign dividends are received during a year of assessment, provided the relevant shares were not sold. It is not always possible to determine when a dividend will be declared, and if so, whether or not it will be exempt from income tax.

When the underlying shares are sold the application of capital gains tax must be considered (see **4.3.2**).

**Example 4 – Carry-forward of unused interest expense to succeeding years of assessment**

*Facts:*

In year 1 Mr A borrows money at interest in order to invest in foreign shares.

The following results were achieved:

	Year 1	Year 2	Year 3
	R	R	R
Income derived from foreign dividends	Nil	Nil	4 500
Interest expense	1 000	1 500	2 000

*Result:*

**Application of section 11C(3):**

	R	R	R
Income derived from foreign dividends	Nil	Nil	4 500
Less: Amount deducted under section 11C(1) limited to income derived from foreign dividends	<u>(Nil)</u>	<u>(Nil)</u>	<u>(4 500)</u>
Taxable income derived from foreign dividends	<u>Nil</u>	<u>Nil</u>	<u>Nil</u>
Interest expense	1 000	1 500	2 000
Balance of interest expense brought forward from the previous year	<u>Nil</u>	<u>1 000</u>	<u>2 500</u>
Total interest available for deduction	1 000	2 500	4 500
Less: Amount deducted under section 11C(1) limited to income derived from foreign dividends	<u>(Nil)</u>	<u>(Nil)</u>	<u>(4 500)</u>
Balance of interest carried forward to the next year	<u>1 000</u>	<u>2 500</u>	<u>Nil</u>

**4.3.2 Interaction between section 11C and the Eighth Schedule to the Act**

The capital gains tax consequences resulting from the disposal of shares in a foreign company by a person having a balance of excess interest available for purposes of section 11C(3) must be considered.

Under paragraph 20(1)(g)(iii) of the Eighth Schedule one-third of any interest expenditure, as contemplated in section 24J, actually incurred on money borrowed to directly finance any expenditure –

- actually incurred for the cost of acquisition or creation of a share listed on a recognised stock exchange or a participatory interest in a portfolio of a collective investment scheme; or
- to improve or enhance the value of such share or participatory interest

may be taken into account in determining the base cost of such listed share or participatory interest for capital gains tax purposes. The interest expense must directly relate to the ownership of the share or participatory interest.

Paragraph 20(3)(a) of the Eighth Schedule on the other hand limits the costs that may be added to the base cost of an asset to those costs which have not been deducted from income.

Hence, if a person disposes of a foreign share or foreign participatory interest while having a balance of excess interest (including any amount of excess interest brought forward from the previous year of assessment under section 11C(3)(a)) available at the time of such disposal, one-third of that balance may be added to the base cost of the foreign listed share or foreign participatory interest under paragraph 20(1)(g) of the Eighth Schedule. Any balance of interest relating to the purchase of foreign unlisted shares will not qualify to be added to base cost on disposal of those shares, and will simply be forfeited.

The above is only valid if and to the extent that paragraph 20(3)(a) of the Eighth Schedule does not apply, that is, if and to the degree the available interest expenditure is not allowable as a deduction in determining the taxable income of the person disposing of the share.



**Example 5 – Determination of base cost when a person has an unused interest expense deduction under section 11C**

*Facts:*

A portfolio investor acquires 1 000 shares in a foreign listed company at a cost of R100 000 which he finances by means of a loan. During the year of assessment under review he disposes of all the shares for R200 000. On the date of disposal the balance of excess interest which has not been deducted from income derived from foreign dividends under section 11C amounted to R15 000. No foreign dividend was derived from the foreign shares during that year of assessment.

*Result:*

	R	R
Balance of excess interest (section 11C)		15 000
Less: Non-allowable portion (2/3 X R15 000)		<u>(10 000)</u>
Interest that may be added to base cost		<u>5 000</u>
Proceeds		200 000
Less: Base cost		(105 000)
Cost of acquisition	100 000	
Allowable interest	<u>5 000</u>	
Capital gain		<u><u>95 000</u></u>

A taxpayer who disposes of a portion of a holding of shares of a particular class in a foreign-listed company must allocate any excess interest expense to the base cost of the shares disposed of on a pro-rate basis.

**5. Further examples to illustrate the application of section 11C to a natural person who is a portfolio investor**

**Example 6:**

The following information pertains to the 2009 year of assessment of an individual.

	R
Gross foreign dividends received (taxable and exempt)	11 200
Foreign dividends exempt under section 10(1)(k)(ii)(bb)	1 000
Foreign dividends exempt under the basic investment income exemption (section 10(1)(j)(xv)(aa))	3 200
Taxable foreign dividends [R11 200 – (R1 000 + R3 200)]	7 000
Interest income earned	Nil
Interest expense actually incurred in the production of foreign dividends	15 000

*Result:*

**(1) Calculation of the amount of interest deductible under section 11C(1)**

	R
Interest expenditure	15 000
Balance of interest brought forward from the previous year of assessment (section 11C(3))	Nil
Total amount of interest available for deduction in the current year of assessment	<u>15 000</u>
Interest available for deduction	15 000
Less: Allowable interest (deduction limited to the amount of Income derived from foreign dividends)	<u>(7 000)</u>
Excess interest	8 000
Less: Exempt dividends (R1 000 + R3 200)	<u>(4 200)</u>
Balance of interest carried forward to the 2010 year of assessment (section 11C(3))	<u>3 800</u>

**(2) Calculation of taxable income derived from foreign dividends**

	R
Gross foreign dividends (para (k) of the gross income definition)	11 200
Less: Gross foreign dividends exempt under section 10(1)(k)(ii)(bb)	(1 000)
Basic interest and dividends exemption (section 10(1)(i)(xv)(aa))	<u>(3 200)</u>
Income derived from foreign dividends	7 000
Less: Interest expenditure (section 11C(1))	<u>(7 000)</u>
Taxable income derived from foreign dividends	<u><b>NIL</b></u>

See **Annexure A** for another example on the calculation of taxable income derived from foreign dividends (**Example 7**).

**Legal and Policy Division**  
**SOUTH AFRICAN REVENUE SERVICE**

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## Annexure A – Example 7 – Calculation of taxable foreign dividends for an individual

Year of assessment	Ref.	2006		2007		2008		2009	
		R	R	R	R	R	R	R	R
Gross foreign dividends (paragraph (k) of the definition of "gross income")			35 000		45 000		50 000		20 000
Less: Exempt foreign dividends (section 10(1)(k)(ii))	A		(9 000)		(2 000)		(2 000)		(10 000)
Less: Basic exemption (section 10(1)(j)(xv))	B		<u>(2 000)</u>		<u>(2 500)</u>		<u>(3 000)</u>		<u>(3 200)</u>
<b>Income derived from foreign dividends</b>	C		24 000		40 500		45 000		6 800
Less: Deductible interest expense			<u>(24 000)</u>		<u>(32 000)</u>		<u>(8 600)</u>		<u>(6 800)</u>
Calculation of deductible interest:									
Interest actually incurred during the year (section 11C(1))		37 000		30 000		8 600		15 000	
Add: Excess interest brought forward from previous year		<u>—</u>		<u>2 000</u>		<u>—</u>		<u>—</u>	
Total interest incurred	D	37 000		32 000		8 600		15 000	
Less: Maximum deduction = income derived from foreign dividends (C) limited to total interest incurred	E	<u>(24 000)</u>		<u>32 500</u>		<u>8 600</u>		<u>(6 800)</u>	
<b>Taxable income derived from foreign dividends</b>			<u>—</u>		<u>8 500</u>		<u>36 400</u>		<u>—</u>
Excess interest (D – E)		13 000		—		—		8 200	
Less: Exempt foreign dividends (A + B)		<u>(11 000)</u>		<u>(4 500)</u>		<u>(5 000)</u>		<u>(13 200)</u>	
Balance carried forward		<u><u>2 000</u></u>		<u>—</u>		<u>—</u>		<u>—</u>	

**Annexure B – The definition of a “dividend” before the coming into operation of Part VIII of Chapter II of the Act**

“**dividend**” means any amount distributed by a company (not being an institution to which section 10(1)(d) applies) to its shareholders, and in this definition the expression “**amount distributed**” includes—

- (a) in relation to a company that is being wound up, liquidated or deregistered or the corporate existence of which is finally terminated, any profits distributed in the course of the winding up, liquidation, deregistration or final termination of that company: Provided that any profits distributed by the liquidator of the company are deemed for purposes of this definition to have been distributed by the company;
- (b) in relation to a company that is not being wound up, liquidated, or deregistered or where the corporate existence of that company is not finally terminated, any profits distributed, including an amount equal to the nominal value, at the time of issue thereof, of any capitalisation shares awarded to shareholders and the nominal value of any bonus debentures or securities awarded to shareholders;
- (c) any reduction of the profits of a company as a result of—
  - (i) the reduction of the capital of that company; or
  - (ii) the acquisition, cancellation or redemption of shares issued by that company; and
- (cA) . . . . .
- (cB) any reduction of the profits of a company, if—
  - (i) that company holds shares in any other company which is a shareholder in relation to that company; and
  - (ii) those shares are cancelled,
- (d) . . . . .

but does not include—

- (e) the nominal value of any capitalization shares awarded to a shareholder to the extent to which such shares have been paid up by means of the application of the whole or any portion of the share premium account of a company;
- (f) subject to the provisions of the first proviso to this definition, any distribution to the extent that it represents a reduction of the share capital or share premium account of a company;
- (g) any amount distributed by a company to a shareholder where the company and the shareholder form part of the same group of companies as defined in section 41, to the extent that the shareholder reduces the cost of the shares held in the company in accordance with generally accepted accounting practice as a result of the distribution;
- (h) the nominal value of any capitalization shares awarded to shareholders as part of the equity share capital of a company;
- (i) any amount distributed by a co-operative by way of a bonus, to the extent that such amount is allowable as a deduction from the income of such co-operative under the provisions of section 27;
- (j) any amount distributed by way of the redemption of a participatory interest in a portfolio, arrangement or scheme contemplated in paragraph (e) of the definition of “company”:

Provided that, for the purposes of this definition—

- (i) where a company has on or after 1 January 1974 transferred any amount from reserves (excluding any share premium account) or undistributed profits to the share capital or the share premium account of the company without applying the amount in paying up capitalization shares or has applied the amount in paying up capitalization shares the nominal value of which did not in whole or in part constitute an amount distributed as contemplated in the foregoing provisions of this definition, the amount so

transferred (reduced by so much thereof as constitutes such an amount distributed) shall be deemed—

- (aa) to the extent that such amount (as so reduced) is shown to consist of profits of a capital nature, to be a profit of a capital nature available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits of a capital nature would be entitled to participate in such a distribution; and
- (bb) to the extent that subparagraph (aa) does not apply, to be a profit which is not of a capital nature and is available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits which are not of a capital nature would be entitled to participate in such a distribution,

regardless of whether in either case the company in fact has or has not any profits available for distribution;

- (ii) where the share capital of the company consists of different classes of share capital, any amount deemed by paragraph (i) of this proviso to be available for distribution to shareholders shall, in applying that paragraph, be apportioned between such classes of share capital in accordance with the rights of the holders of the corresponding classes of shares to participate in distributions of profits of a capital nature or profits which are not of a capital nature, as the case may be, and the amount deemed by the said paragraph to be available for distribution to the shareholders in respect of any such class of shares shall be the amount allocated to the share capital of that class under such apportionment;
- (iiA) where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any of the shares of any class (hereinafter referred to as the original shares) held by any such shareholders are converted into shares of any other class or the original shares are cancelled and shares of any other class are issued in place of the original shares, the said amount shall, to the extent that it relates to or may have been apportioned to the original shares, be deemed to relate to and to be a profit available for distribution to the shareholders in respect of the shares of such other class and the provisions of this proviso shall, to the extent that the said amount is deemed to consist of a profit as aforesaid, apply in respect of such amount as though it were an amount referred to in paragraph (i) of this proviso, and the shareholders in respect of the shares of such other class shall, regardless of the rights attaching to such shares, be deemed as respects the said amount to be entitled to participate in profits of the same nature as the profit deemed by this paragraph to be available for distribution to the shareholders, whether such profit is of a capital nature or is not of a capital nature;
- (iiB) subject to the provisions of paragraphs (iiA) and (iv) of this proviso, where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any shares issued by the company are cancelled without a return of the share capital or any share premium relating to such shares, such share capital or share premium or any reserve created by reason of the cancellation of such shares shall, to the extent that the said profit may be apportioned to the said shares, be deemed to consist of a profit (of the same nature as the aforesaid profit) available for distribution to shareholders who are or may become interested in such share capital, share premium or reserve, and where any cash is or any assets are given to shareholders by way of a return of or a distribution out of such share capital, share premium or reserve, the sum of the amount of such cash and the value of such assets shall, to the extent that such sum does not exceed the amount deemed by this paragraph to consist of a profit available for distribution to shareholders, be deemed to be a profit (of the same nature as the first-mentioned profit) distributed to the shareholders;

- (iii) if, in the event of any partial reduction of the capital of a company or acquisition, cancellation or redemption of shares issued by that company, any cash or any asset is given to a shareholder and the cash or asset (or a portion thereof) represents a return of share capital or share premium, the amount of share capital or share premium so returned—
- (aa) to shareholders entitled to participate in distributions of profits which are not of a capital nature and in respect of whom any amount is deemed under paragraph (i)(bb) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders does not exceed the aggregate of the amounts of the profits so deemed to be available for distribution to such shareholders) be deemed to be a profit, not of a capital nature, distributed to such shareholders, and the amounts so deemed to be available for distribution shall be deemed to have been reduced accordingly; or
- (bb) to shareholders entitled to participate in distributions of profits of a capital nature and in respect of whom any amount is deemed under paragraph (i)(aa) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders (less so much thereof as is deemed under subparagraph (aa) of this paragraph to be a profit, not of a capital nature, distributed to such shareholders) does not exceed the aggregate of the amounts of the profits deemed under the said paragraph (i)(aa) to be available for distribution to such shareholders) be deemed to be a profit of a capital nature distributed to such shareholders and the amounts so available for distribution shall be deemed to have been reduced accordingly;
- (iiiA) in the event of the reduction of the share capital or share premium of a company, or the acquisition, cancellation or redemption of shares issued by that company, in relation to a class of shareholders, that company must be deemed to have distributed profits to the shareholders in that class to the extent that the share capital and share premium so reduced exceeds the share capital and share premium contributed by that class of shareholders;
- (iv) where the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it and such share capital is in consequence partially reduced to take account of such losses, any amounts which in terms of this proviso are at the date of such partial reduction of such share capital deemed to be profits available for distribution to shareholders shall be deemed to have been reduced to the extent that such losses are so accounted for and in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders—
- (aa) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of the amount by which the said share capital is reduced as is attributable to losses of a capital nature; and
- (bb) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the amount by which the said share capital is reduced as is attributable to losses which are not of a capital nature;
- (v) in the event of the winding-up or liquidation of the company—
- (aa) any profits which in terms of the preceding provisions of this proviso are, at the commencement of the winding-up or liquidation, deemed to be available for distribution to shareholders shall, if the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it, be deemed to have been reduced in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders—

- (A) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of the loss of the said share capital as is attributable to losses of a capital nature; and
  - (B) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the loss of the said share capital as is attributable to losses which are not of a capital nature; and
- (bb) the aggregate of any cash and the value of any assets given to shareholders entitled to participate in profits not of a capital nature shall, to the extent that such aggregate exceeds so much of the sum of the share capital and any share premium contributed by such shareholders (less so much of such share capital and share premium as has been lost) as remains after deducting therefrom an amount equal to so much of any profits, not of a capital nature, which are deemed by this proviso (after applying subparagraph (aa) of this paragraph) to be available for distribution to such shareholders at the commencement of the winding-up or liquidation, as relates to the said share capital, be deemed to be a profit, not of a capital nature, distributed to such shareholders, but the amount of that profit shall not be determined at an amount which exceeds the aforesaid amount:

Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company: Provided further that for the purposes of this definition "**profits**" includes realised and unrealised profits of a company whether or not those unrealised profits have been recognised in the financial records of the company;