

BINDING PRIVATE RULING: BPR 428

DATE: 14 May 2026

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITIONS OF “CONTRIBUTED TAX CAPITAL” AND “GROSS INCOME”, 8(4)(a) AND 11D
SUBJECT : DELAYED CONTRIBUTION EQUITY INVESTMENT STRUCTURE

Preamble

This binding private ruling is published with the consent of the Applicant(s) to which it has been issued. It is binding between SARS and the Applicant and any Co-Applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the income tax implications of a share subscription, based on a Delayed Contribution Equity Investment Structure (DCEIS), and the deductibility of expenditure under section 11D.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 2 April 2026. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 1(1) – definitions of “contributed tax capital” and “gross income”;
- section 8(4)(a); and
- section 11D.

3. Parties to the proposed transaction

The Applicant: A resident company.

Company A: A non-resident company.

4. Description of the proposed transaction

The Applicant is engaged in research and development (R&D) activities.

Company A is an investment vehicle and maintains a diverse international investor base. All future investors of Company A will not be South African residents.

The Applicant and Company A propose to enter into a share subscription transaction based on a DCEIS as catered for in section 40(5) – (6) of the Companies Act 71 of 2008 (Companies Act).

The proposed transaction will be implemented as follows:

- The Applicant and Company A will enter into a Share Subscription Agreement in terms of which Company A will subscribe for, and the Applicant will issue to Company A, a certain number of ordinary no par value shares. The share subscription will be done on a DCEIS basis in compliance with section 40(5) – (7) of the Companies Act.
- Company A will pay the subscription amount for the issued shares in tranches over multiple years and up to a pre-agreed aggregate monetary cap.
- The Applicant will automatically be entitled to receive an amount equal to a certain percentage of the net proceeds raised by Company A from its fundraising issuances, subject to the pre-agreed aggregate monetary cap.
- Company A will not be contractually obliged to make payment of any fixed amounts to the Applicant nor are there any fixed payment dates for the payment of the subscription amount. The Applicant will have no rights to require Company A to raise any minimum amount of consideration, nor have any remedy if Company A's fundraising efforts prove inadequate other than the right to cancel the subscription shares. Should Company A be unsuccessful in raising investments, the Applicant will not be entitled to demand further payments. There is no guarantee that the Applicant will receive an amount equal to the pre-agreed aggregate monetary cap in subscription proceeds from Company A.
- The Applicant will credit each tranche of the subscription proceeds received from Company A to its stated capital / contributed tax capital (CTC) account on each receipt of payment.
- The issued shares will be held in trust by a stakeholder in accordance with section 40(5)(b) of the Companies Act and shall not be released or transferred to Company A until Company A has fulfilled its obligations under the Share Subscription Agreement.
- Dividends declared in respect of the subscription shares held by the stakeholder shall be retained by the Applicant until such time as the subscription shares are released to Company A.
- The Applicant will use the subscription proceeds it receives from Company A to engage in R&D activities. The Applicant has submitted applications to the Department of Science, Technology and Innovation (DSI) for approval of the R&D as required by section 11D(9).
- The Applicant will retain full and exclusive direction, control and performance of all R&D activities. All intellectual property arising from these activities will vest exclusively in the Applicant. Company A will therefore only acquire shareholder rights.

5. Conditions and assumptions

This binding private ruling is subject to the following additional conditions and assumptions:

- a) The Applicant's R&D projects will be approved by the DSI in accordance with section 11(9).
- b) The proposed share subscription transaction will comply with the requirements of section 40 of the Companies Act.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- a) The subscription consideration that Company A will pay to the Applicant in respect of the DCEIS share subscription will accrue to the Applicant in each year of assessment in which Company A secures funding. The quantum of each accrual amount will be equal to a percentage of the net proceeds raised by Company A up to the pre-agreed aggregate monetary cap.
- b) The subscription consideration that will accrue to the Applicant from Company A in respect of the DCEIS share subscription constitutes amounts of a capital nature for the Applicant and not "gross income" as defined in section 1(1) of the Act.
- c) Each subscription consideration that will accrue to the Applicant as contemplated above will constitute the Applicant's "contributed tax capital" as defined in section 1(1) of the Act.
- d) Section 11D(2) is available to the Applicant to deduct expenditure in respect of its R&D project provided that –
 - the Applicant's R&D does not include items listed in the *proviso* to the definition of "scientific or technological research and development" in section 11D(1);
 - the Applicant's R&D expenditure does not include items listed in section 11D(2)(b);
 - the Applicant's expenditure actually incurred will be directly and solely in respect of the carrying on of the R&D project in South Africa;
 - the R&D expenditure contemplated above is incurred in the production of income and in the carrying on of any trade;
 - the expenditure has been or will be incurred within 6 (six) months prior to or on or after the date of receipt of the application by the DSI for approval of the R&D in terms of section 11D(9); and
 - the Applicant's R&D project is approved by the DSI in terms of section 11D(9).
- e) Any expenditure that is deductible under section 11D(2) will be deducted by the Applicant in the year of assessment that it is incurred.

- f) The share subscription by Company A in the Applicant on a DCEIS basis will not have any impact on the deductibility of the R&D expenditure by the Applicant in terms of section 11D(2).
- g) The payment of the subscription consideration by Company A to the Applicant will not give rise to a recovery or recoupment under section 8(4)(a) of any deductions that may be available to the Applicant under section 11D of the Act.
- h) Section 11D(4) will not apply.
- i) Section 11D(7) will not apply to the Applicant.

General Note:

The individual items of R&D expenditure that the Applicant may incur have not been analysed to determine whether they fall within the ambit of section 11D(2) or any another provision of the Act.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 2 April 2026.