

**BINDING CLASS RULING: BCR 081**

DATE: 8 September 2022

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTIONS : SECTIONS 8E AND 8EA**  
**SUBJECT : HYBRID EQUITY INTEREST OR THIRD-PARTY BACKED SHARE**

***Preamble***

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

**1. Summary**

This ruling determines whether a participatory interest held by a class member in a collective investment scheme (CIS) in securities constitutes a “hybrid equity instrument” as defined in section 8E or a “third-party backed share” as defined in section 8EA.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 4 May 2022. 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 8E; and
- section 8EA.

**3. Parties to the proposed transaction**

The applicant:	A resident management company of the CIS
The CIS:	A portfolio of a collective investment scheme in securities in accordance with the provisions of Part IV of the Collective Investment Schemes Control Act 45 of 2002 (CISCA)
The class members:	Resident natural persons, trusts, companies and pension funds

#### **4. Description of the proposed transaction**

The CIS is open to the public and generally invests in dividend yielding instruments in accordance with the provisions of Board Notice 90 issued by the Financial Sector Conduct Authority and the provisions of the CISCA.

The CIS proposes to amend its investment portfolio and will, in future, invest in rated preference shares, bank preference shares, unit trust funds and interest-bearing investments which provide an appropriate return. The precise instruments in which the applicant proposes to invest, as well as the terms of those instruments, were furnished to SARS and were duly examined. The proposed transaction relates to the returns which will be received and distributed by the CIS in future.

The value of the participatory interest which the class members hold in the CIS will be determined partly with reference to the money market fund investments and partly with reference to preference share investments. The participatory interests held by the class members are not subject to any arrangement in terms of which the issuer of that equity instrument is obliged to redeem that equity instrument or to distribute an amount constituting a return of the issue price in whole or in part.

The CIS will not invest in any instrument contemplated in paragraphs (a), (b) and (c) of the definition of a "hybrid equity instrument" as defined.

The terms of the participatory interest do not entitle the class members to any of the rights contemplated in the definition of an "enforceable right".

#### **5. Condition and assumption**

This binding class ruling is subject to the following additional condition and assumption:

- a) The ruling is applicable solely to the investments made by the CIS as set out in the facts and which were examined by SARS.

#### **6. Ruling**

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

- a) The participatory interest in the CIS, held by a class member will not constitute a "hybrid equity instrument" as defined in section 8E nor a "third-party backed share" as defined in section 8EA.

#### **7. Period for which this ruling is valid**

This binding class ruling is valid for a period of five years from 4 May 2022.