



UNICUS **TAX UPDATE**

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BPR 428

Delayed Contribution Equity Investment Structure



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HELLO & WELCOME!

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FACTS

THE TRANSACTION LOOKS LIKE EQUITY, BUT THE FUNDING MECHANICS ARE NOT VANILLA

Parties and commercial context

- Applicant: resident company carrying on R&D activities.
- Company A: non-resident investment vehicle with international investors.
- Future Company A investors are not expected to be South African residents.
- Applicant has applied to DSI for R&D approval under section 11D.

DCEIS mechanics

- Company A subscribes for ordinary no par value shares in the Applicant.
- Subscription price is paid in tranches over multiple years, capped in aggregate.
- Payments are linked to a percentage of Company A fundraising proceeds.
- No fixed payment dates, no minimum amount, and no guarantee of reaching the cap.

WHY THIS WAS WORTH A FORMAL RULING

IF THE SUBSCRIPTION PRICE WERE FIXED AND PAID UPFRONT, MUCH OF THIS WOULD BE OBVIOUS.

NORMAL SUBSCRIPTION

Shares issued for a fixed subscription price payable at closing or on fixed terms.

Capital contribution / CTC treatment usually follows the form.

DCEIS IN BPR 428

Variable, contingent, capped tranches tied to Company A fundraising, with shares held by a stakeholder until obligations are fulfilled.

Not the same risk profile

That creates scope for SARS to test the legal label against substance.

The possible adverse SARS narrative:

“This is not true share capital. It is revenue, R&D funding, reimbursement, or a payment connected to services/IP.”

RULINGS AND RISKS: CORE RECEIPT QUESTIONS

THE FIRST CLUSTER PROTECTS THE EQUITY CHARACTER AND TIMING OF THE SUBSCRIPTION PROCEEDS.

Ruling granted by SARS	Risk or adverse position being covered
Accrual occurs in each year Company A secures funding; amount equals the agreed percentage of net proceeds, up to the cap.	SARS could argue the full capped subscription price accrued upfront when the shares were issued, even though payment was uncertain and contingent.
Subscription consideration is capital in nature and not “gross income”.	SARS could say the fundraising-linked tranches are revenue receipts, R&D funding, or disguised payment for services rather than equity consideration.
Each subscription amount that accrues constitutes contributed tax capital (CTC).	If the amounts are not true share subscription consideration, they may not form CTC, creating future distribution risk.

Key inference: the form was share subscription, but SARS comfort was needed because the price behaved more like a contingent funding stream.

RULINGS AND RISKS: SECTION 11D DEDUCTION

THE SECOND CLUSTER PROTECTS THE R&D DEDUCTION DESPITE THE UNUSUAL EQUITY FUNDING.

Ruling granted by SARS	Risk or adverse position being covered
Section 11D(2) is available, provided the R&D is approved and the ordinary section 11D requirements are met.	SARS could say the expenditure was not deductible because it was effectively funded by Company A, undertaken for Company A, or insufficiently connected to the Applicant's own trade/income production.
Deductible section 11D expenditure is deducted in the year of assessment in which it is incurred.	SARS could seek timing deferral, especially because subscription funding is received in tranches and DSI approval is a condition.
The ruling does not analyse each individual R&D cost item.	The BPR gives structural comfort only; it does not pre-clear whether every cost falls within section 11D(2).

Training point: a favourable ruling on the structure is not the same as a blanket approval of all future expenditure.

RULINGS AND RISKS: PREVENTING “FUNDING/RECOVERY” ARGUMENTS

THESE RULINGS ARE AIMED AT PROTECTING THE DEDUCTION AFTER THE MONEY IS SPENT.

Ruling granted by SARS	Risk or adverse position being covered
The DCEIS share subscription does not affect the deductibility of R&D expenditure under section 11D(2).	SARS could argue the equity mechanics taint the section 11D claim because the R&D is funded through a special investor structure.
Payment of subscription consideration does not trigger a section 8(4)(a) recovery or recoupment of section 11D deductions.	SARS could say the tranches are, in substance, reimbursements or recoveries of R&D expenditure previously deducted.
Company A only obtains shareholder rights; Applicant keeps exclusive direction, control, performance and IP ownership.	These facts help fend off the argument that Company A is paying for R&D services, deliverables, or IP access.

Key inference: the parties needed SARS to respect the funds as capital subscription proceeds, not as R&D support or recovery.

RULINGS AND RISKS: ANTI-DUPLICATION / CONNECTED FUNDING CONCERNS

THE LAST CLUSTER CONFIRMS THAT SPECIFIC SECTION 11D LIMITATION RULES ARE NOT TRIGGERED.

Ruling granted by SARS	Risk or adverse position being covered
Section 11D(4) will not apply.	SARS could argue that the expenditure was incurred in circumstances that bring a limitation or exclusion rule into play, especially if another person is effectively funding or benefiting from the R&D.
Section 11D(7) will not apply to the Applicant.	SARS could argue that the Applicant is carrying on R&D for or on behalf of another person, or that another party has the relevant R&D entitlement/benefit.
Validity period: three years from 2 April 2026.	The ruling gives transaction-specific certainty, but only within the facts and assumptions presented to SARS.

Training point: look for the facts that keep the Applicant as the true R&D performer, risk-taker and IP owner.

FACTS THAT MADE THE RULING DEFENSIBLE

Stakeholder holding

Shares are held by a stakeholder until Company A fulfils its obligations.

Accounting treatment

Each tranche is credited to stated capital / CTC when received.

IP ownership

All IP arising from the R&D vests exclusively in the Applicant.

No fixed entitlement

No fixed dates, no fixed minimum and no guarantee the cap will be reached.

Applicant control

Applicant retains direction, control and performance of all R&D.

Company A rights

Company A acquires shareholder rights only, not R&D deliverables or IP.

These facts answer the question:

“Why is Company A paying?” The answer SARS accepted is: “for equity”, not “for R&D services, IP, or reimbursement.”

PRACTICAL TRAINING TAKEAWAYS

HOW TO TURN THE BPR INTO ADVISORY INSIGHT.

- A BPR often tells you where the taxpayer felt vulnerable, not only what the law says.
- Here, the vulnerability was the contingent, fundraising-linked subscription price that may look like outsourced R&D
- The ruling protects three things: timing, capital/CTC character, and section 11D deductibility.
- The strongest facts were Applicant control of R&D and exclusive IP ownership.

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