

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003, section 9 of Act 32 of 2004, section 7 of Act 8 of 2007 and section 13 of Act 7 of 2010

xx. (1) Section 8E of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a) of the definition of “hybrid equity instrument”;
- (b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the definition of “hybrid equity instrument” of the following words:
“any share [**other than a share contemplated in paragraph (a)**], if—”;
- (c) by the substitution in subsection (1) for the words preceding item (aa) of paragraph (b)(ii) of the definition of “hybrid equity instrument” of the following words:
“such share does not rank *pari passu* as regards its participation in dividends or foreign dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend or foreign dividend payable on such share is to be calculated directly or indirectly with reference to—”;
- (d) by the addition in subsection (1) of the word “and” at the end of item (cc) of paragraph (b)(ii) of the definition of “hybrid equity instrument”;
- (e) by the addition in subsection (1) to the definition of “hybrid equity instrument” of the following paragraph:
“(c) any share other than a share contemplated in paragraph (b) if any dividend payable on such share—
(i) is to be calculated directly or indirectly with reference to any specified rate of interest or the amount of capital subscribed for such share; and
(ii) is directly or indirectly derived mainly from interest, as defined in section 24J;”;
- (e) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “right of disposal” of the following words:
“ ‘**right of disposal**’ means a right which the holder of a share has to require [**any party**] the issuer of that share—”; and
- (f) by the substitution for subsection (2) of the following subsection:
“(2) Any dividend [**declared by a company on**] or foreign dividend received by or accrued to a person in respect of a hybrid equity instrument which is [declared] received or accrued on or after the date that the share becomes a hybrid equity

instrument **[shall for the purposes of this Act] must** be deemed in relation to **[the recipient thereof] that person** only to be an amount of interest accrued to **[the recipient from a source within the Republic] that person**.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of dividends or foreign dividends received or accrued on or after that date.