Expiry of STC credits on 31 March 2015

Dividends tax was introduced into the South African tax regime on 1 April 2012 and effectively replaced secondary tax on companies (STC). STC was levied on dividends distributed by companies at the flat rate of 10%. In terms of the dividends tax regime, a 15% tax is levied on the amount of any dividend paid by a company. The company is liable to withhold the amount of the tax in respect of cash dividends and pay it over to the South African Revenue Service (SARS).

Any STC credits which companies calculated as at 31 March 2012 (ie the day before dividends tax came into effect) could be carried over into the newly introduced dividends tax regime. These STC credits could be used by the company for a period of three years from 31 March 2012 to reduce any dividends tax paid by a company, to the extent that the dividend does not exceed the STC credit of the company and the company has, by the date of payment of the dividend, notified the recipient of the amount by which the dividend reduces the STC credit of the company.

In terms of s64J of the Income Tax Act No 58 of 1962 (Act), the STC credit of a company (company A) as at 31 March 2012 could be calculated as the sum of the amount by which the dividends accrued to company A during the dividend cycle ending on 31 March 2012 exceeded the dividends declared during that cycle by company A. This STC credit could be increased by any dividends accrued to company A on or after 1 April 2012 and in respect of which company A received a notification from the company paying the dividend (company B) of the amount by which the dividend paid reduced the STC credit of company B and the notification was received by no later than the date on which the dividend was paid. This effectively resulted in a transfer of a STC credit between company A and company B, ie the company paying the dividend and the company in favour of which the dividend accrued.

The STC credit calculated by a company in accordance with the aforementioned formula would then be reduced by any dividends declared and paid by that company after 1 April 2012 until such time that the company’s STC credit is used up. The reason for this treatment of STC credits is to prevent double taxation of the excess net accrued dividends of a company that have already been subject to STC.

The STC credit used by the company must be apportioned between all shareholders receiving a dividend from the company by taking into account the ratio between the total reduction in the STC credit and the total dividend paid to all shareholders. This ensures that any particular shareholder does not unduly benefit from a company’s STC credit by setting off a disproportionate share of the company’s entire STC credit against its liability for dividends tax with the effect of prejudicing the company’s other shareholders.

In terms of s64J(7) of the Act, in the event that a company neglects to withhold dividends tax from a dividend paid to a person as a result of an inaccurate notification by the company, the company itself will be liable for the amount of dividends tax.

Section 64J(5) of the Act clearly states that the STC credit of a company on or after the third anniversary of the effective date, being 1 April 2012, is nil. Accordingly, companies should be aware that the expiry date for the use of any unused STC credits is 31 March 2015, after which date the dividends tax regime will be of full force and effect and companies will no longer be able to set off STC credits against dividends in order to reduce the dividends tax liability arising from dividends paid to shareholders. It is therefore recommended that companies with STC credits pay any outstanding dividends to shareholders before 31 March 2015 in order to take advantage of any STC credits before the expiry thereof.

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