Dividends tax: questions and answers

The dividends tax, a new form of tax on dividends paid by companies, comes into effect in South Africa soon. Here are some practical questions and answers about the new tax.

When will the new dividends tax take effect?

It’s no joke – the dividends tax starts on 1 April 2012 (see Government Notice no 1073 in the Government Gazette no 34873 dated 20 Dec 2011). The tax applies to any dividend declared and paid on or after that date. A dividend declared during March 2012 will still be subject to the Secondary Tax on Companies (STC), but note that the final dividend cycle for companies ends on 31 March 2012. This will accelerate the need to pay the final tranche of STC which may be payable.

Where do I find the dividends tax?

The dividends tax is contained in Part VIII of Chapter II (sections 64D to 64N) of the Income Tax Act 58 of 1962 (the Act). It is very important to know that the legislation creating the tax was introduced in 2008 but has since been changed no less than three times. So, make sure that you are looking at the right text.

You can also find useful information about the mechanics of the tax and payment of the tax on the website of the South African Revenue Service (SARS) at www.sars.gov.za under the heading “Dividends Tax”.

What is the rate of tax?

The tax is calculated at the rate of 10% of the amount of any dividend paid by a company. The rate may be lower in the case of shareholders which are not tax residents in South Africa.
The term “dividend” is defined in section 1 of the Act. Generally, a distribution is only a dividend if it is declared from any account other than so-called “contributed tax capital” (share capital or the old share premium) or if the distribution arises from a general share buyback.

When is the tax levied?

Dividends tax is levied on the date that the dividend is paid or payable. The dividend is deemed to be paid on the earlier of the date on which the dividend is paid or the dividend becomes payable by the company that declared the dividend, in this latter context then the last date to register for the dividend may thus be the “trigger date” for collection of the tax. This payment regime has been legislated to avoid confusion with accruals to the shareholder.

The dividends tax must be paid to SARS by the end of the month following the date that the dividend was paid. It is important to note that this is a single stage tax, ie there are no credits carried forward in this system. The payment must be accompanied by a return in the prescribed format.

Who is liable for the tax?

Legally, the person liable for the tax is the beneficial owner of the dividend, ie the person entitled to the benefit of the dividend attaching to a share, usually the shareholder. However, generally, the tax is withheld by the company paying the dividend (or the shareholders’ central securities depository participant (CSDP), or the managers of the company’s share register) and is paid over to SARS, on behalf of the shareholder.

So, the tax is a charge on the shareholder which is withheld by the company. In this respect, the dividends tax is different to STC that is a tax on the company paying the dividend.
Do any exemptions apply?

Certain shareholders are exempt from dividends tax. For instance, the following persons are exempt from the dividends tax:

Companies that are tax resident in South Africa are exempt. For instance, if a South African tax resident company (Company A) pays a dividend to its shareholder which is a company that is tax resident in South Africa (Company B), the dividend is not subject to dividends tax. There will only be dividends tax when Company B pays a dividend to persons who are not exempt from the tax, eg natural persons.

Public benefit organisations (PBOs) that have been formally exempt from tax by SARS in terms of section 30 of the Act are exempt from dividends tax. This is a very important tax break for PBOs because, under the STC regime, the PBOs would in all cases have received the dividends reduced by STC.

Pension and provident funds.

To claim the exemption, the entity must submit a written declaration to the relevant company or intermediary in the format prescribed by SARS beforehand.

What about listed companies and collective investment schemes?

In this case, the company does not withhold the dividends tax; it is withheld by the relevant “regulated intermediary” ie the broker, management company or central securities depository participant (CSDP).

And close corporations and private companies?

Close corporations (CCs) and private companies are defined as companies for purposes of the Act.

As such, CCs and private companies must withhold the dividends tax unless an exemption applies.

I am not tax resident in South Africa. Do I pay the dividends
A company that is not tax resident in South Africa must withhold the dividends tax if its shares are listed on a South African securities exchange (e.g., the JSE or AltX).

A shareholder that is not tax resident in South Africa is liable for the dividends tax that (to recap) is withheld by the local company or regulated intermediary paying the dividend. However, if the shareholder (being either a company or a natural person) is tax resident in a country that has a double taxation treaty (DTA) with South Africa, the rate of the dividends tax may be reduced to 5%, depending on the percentage of shares the non-resident holds and the terms of the relevant treaty. Most of South Africa’s major trading partners have DTAs with South Africa.

How do dividends in specie work?

Often companies declare a dividend, but don’t settle the dividend in cash. Instead, the companies settle the dividend in specie (Latin for “in kind”) by transferring assets to the shareholders.

For instance, a company may declare a dividend to be settled by the transfer of shares in the amount of R100 to the shareholder. In this case, the amount of the dividend is deemed to be equal to the market value of the asset distributed. So, if a company declares a dividend of R100 but settles the dividend by distributing an asset worth R150 to the shareholder, the dividends tax is determined on R150 (and not on R100).

Where a company that is tax resident in South Africa declares and settles a dividend in specie, the company – and not the shareholder – is liable for the tax; in other words, the tax is a charge on the company in this case, and not the shareholder.
What about secondary tax on companies?

STC falls away but until 31 March 2017 a company may set off the liability of withholding of dividends tax against any so-called STC credits it may hold. It is important to note that where a company uses its STC credit like this, it is attributed to the full dividend; not just the portion which needs to be withheld for the relevant shareholders. The company must in these circumstances notify the shareholders of the amount by which the dividend has reduced the company’s STC credit, and such reduction is pro rata to all shareholders. If the dividend paid exceeds the STC credit, then dividend withholding applies to such excess.

Okay. But what does all this mean for me practically?

Generally, if you are a natural person you don’t need to do anything if you are a shareholder of a company or an investor in a collective investment scheme (eg unit trusts). You will simply receive your dividends net of 10% dividends tax in the same way as you would have received your dividends net of STC at a rate of 10% in the past. If you are not tax resident in South Africa you must claim your treaty benefits, if applicable. And if you are exempt from the dividends tax (eg a PBO) make sure that you inform the company, your CSDP and/or collective investment schemes of your exempt status on the prescribed form.

If you are responsible for the financial management of a private company or CC, you must ensure that you understand how the dividends tax works and that the company or CC withholds the tax when it makes distributions to shareholders or members.