South African Revenue Service

INTRODUCTION TO DIVIDENDS TAX

In 2007, the Minister of Finance announced that Secondary Tax on Companies (STC) would be replaced by Dividends Tax (DT). Since the announcement, legislation has been enacted annually to provide a legislative foundation for the implementation of DT (refer to sections 64D to 64N of the Income Tax Act, 1962 (the Act)) in this regard). The DT legislation has now principally been finalised, with a few relatively minor refinements due for release in the annual Taxation Laws Amendment Act (due for promulgation in about December 2011). Importantly, an implementation date for the DT of 1 April 2012 has been pronounced in the annual budget announcement, and the notice required to make this date effective will be published in the Government Gazette soon.

The reason for the change is that STC is, as the name indicates a secondary tax on companies, and this created the impression that South Africa's corporate tax rate was higher than that of our competition internationally, making us a less attractive destination for investment. The change to DT, therefore, aligns us with international standards and best practice where the recipient of the dividend is liable to the tax relating to the dividend and not the company paying it.

In simple terms, DT is a tax imposed on shareholders at a rate of 10% on receipt of dividends, whereas STC is a tax imposed on companies (at a rate of 10%) on the declaration of dividends. The DT is categorised as a withholding tax, as collection of the tax is withheld and paid to SARS by the company paying the dividend or by a regulated intermediary (i.e. a withholding agent interposed between the company paying the dividend and the beneficial owner), and not the person liable for the tax, i.e. the beneficial owner of the dividend.

DIFFERENCES BETWEEN STC AND DT

The following is a basic overview of the differences between STC and DT:

- ***Base & person liable***

  The liability for STC is triggered by declaration of a dividend, falls on the company declaring the dividend, and is payable on top of the dividend distributed.

  In contrast thereto as a general principle the liability for DT is triggered by payment, falls on the recipient (i.e. beneficial owner) of the dividend, and is to be withheld from the dividend payment by either the company distributing the dividend or, where relevant, certain withholding agents. Dividends *in specie* is an exception to this principle as the liability for the DT remains on the company paying the dividend (as under STC), and is not transferred to the recipient. Further, where low/no interest loans are provided by a company to a person by virtue of shares held in that company the interest benefit so provided is deemed to be a dividend and consequently subject to DT.

- ***Rate***

  Under DT the default position is that tax at 10% should be withheld (or paid in the case of a dividend *in specie*) once a dividend is paid, unless one of the exemptions or a reduced rate is applicable. The current STC rate is 10%.

- ***Exemptions***

  Under STC the dividends declared by certain companies were exempt based on the status of the declaring company (section 10 exempt entities; fixed property companies; certain gold miners; intra-group; tax holiday companies and/or registered micro businesses).

  Under DT dividend payments could be exempt from DT depending on the nature or status of the recipient. The exemptions are "elective" in the sense that it will only apply where the company distributing the dividend or relevant withholding agent receives the required notifications ("declarations" and "undertakings" in the form to be prescribed by SARS) from the recipient prior to payment of the dividend. Examples of exempt entities are local companies, any of the three tiers of government; approved public benefit organisations (section 30(3) of the Act); mining rehabilitation trusts (section 37A of the Act); persons referred to in section 10(1)(cA) of the Act; pension, provident, preservation, retirement annuity, beneficiary and benefit funds (section 10(1)(d) of the Act); persons referred to in section 10(1)(t) of the Act (CSIR, SANRAL etc); shareholder in registered micro businesses (6th Schedule of the Act) (insofar as dividend <R200,000); and non resident beneficial owners of dividends received from SA listed non resident companies).

- ***Reduced rates for foreign residents***

  Under DT dividend payments to foreign residents may be subject to a reduced rate where the relevant Double Taxation Agreement (DTA) between South Africa and their country of residence provides for such. This normally requires the foreign beneficial owner to be a company and hold between 10% and 25% of the share capital of the South African company declaring the dividend. In order to qualify the foreign resident needs to declare their status (by way of a similar "declaration" and "undertaking" referred to above) to the company declaring the dividend or the regulated intermediary involved – if they do not declare they will not qualify (despite qualifying in terms of the DTA). Reduced rates were not possible under STC.

- ***Calculation***

  The calculation of STC is based on the net outflow of dividends (outgoing less incoming) in any particular "dividend cycle", whereas DT is based on the gross outflow of dividends with no reference to any period. Additionally, for a period of five years the recipient's liability for DT can be reduced with the amount of any "STC credit" available to the company. The STC credit is made up from two possible sources, i.e. any unused STC credit of the company brought forward from the final dividend cycle under the STC system, as well as any new pro rata portion of any STC credit received by the company under the DT (less any dividends paid).

- ***Payment of liability***

  Under STC payment of the tax was made to SARS by the company liable for the tax (on or before the end of the month following the month in which the dividend cycle ends).

  Under DT the payment of the tax will normally not be made by the party liable for the tax (the beneficial owner of the dividend), but will be withheld from the dividend payment by a withholding agent (either the distributing company or a regulated intermediary) who will then pay the tax to SARS (on or before the end of the month following the month in which the dividend was paid to the beneficial owner). If any of the withholding agents fails to withhold the required tax recovery could still be made from the person who has the liability therefore, i.e. the recipient of the dividend. Withholding agents who fail to withhold could be held personally liable under certain circumstances. Where a dividend *in specie* is distributed a scenario similar to that under STC will apply as the company distributing the dividend retains the liability for the tax as well as the duty to pay to SARS.

- ***Returns***

  Payment of STC and DT has to be accompanied by a return in the form prescribed by the Commissioner. A return must be submitted to SARS by each entity that is involved in the dividend distribution chain, accounting for the payment of dividends to beneficial owners (including any withholding of tax) and/or the pass through of dividends to regulated intermediaries for further distribution (and withholding of tax where relevant). The return summarises how the dividends were dealt with and whether any taxes were withheld (receipt/declaration of dividends vs. the distribution of the dividends received/declared) and must be accompanied by supporting data underpinning the return. The supporting information and return can be submitted through various channels.

- ***Refunds under the DT dispensation***

  Refunds are dealt with differently under the DT dispensation as refunds should be claimed from and paid by the company or regulated intermediary who withheld the DT. The withholding agents should utilise any future DT withholdings made by them as a source for the refunds. In limited circumstances (i.e. company withholders where future withholdings are insufficient) a recovery claim can be made by the withholding agent from SARS (i.e. no direct refund claims by taxpayers are allowed).

- ***General***

  With regard to dual listed companies any foreign withholding taxes paid on the dividends may be deducted from any DT due (which did not apply under STC).

  The remaining administrative provisions such as the levying of interest, estimated assessments, etc remain substantially similar under DT as it was under STC.

DIVIDENDS TAX SUPPORTING DATA

In order for SARS to effectively administer DT and ensure a complete audit trail of a dividend from the time the dividend was declared/paid up to the point where it is received by the beneficial owners, all entities involved in the dividend will be required to submit supporting data. The data requirements (once all phases have been implemented) are explained below:

- The entity declaring/paying the dividend is required to submit information about the dividend declared as well as information about the entities to which the dividend was paid.

- Regulated intermediaries will be required to submit information about:

    - The entities from which the dividend payment was received
    - The entity that declared the dividend
    - The entities to which the dividend was paid.

- Beneficial owners who received dividends which were exempt from DT (such as South African companies, pension funds, etc) will be required to submit information to SARS about the:
    - Dividend received
    - Details of the entity that it was received from
    - Details about the entity that declared the dividend.

After extensive consultation with the Dividend Tax working group (represented by members from ASISA, BASA, JSE, STRATE etc), all stakeholders and SARS agreed to a phased implementation approach in respect of the data requirements explained above.

In the first phase only the dividend payment side (pay out and pass-on) will be enforced, with the receipt side (where the recipient has to declare all dividend receipts) being deferred for a year to allow external stakeholders to prepare their systems to cater for this requirement. However, SARS' systems will immediately cater for both the payment and receipt sides, allowing for submission of the receipt side information from day one for those who are able to do so. This phased approach has been agreed with the main external stakeholders involved in the DT work group, and the minimum requirements agreed are the relevant detail relating to the beneficial owner, including the detail of the company which declared the dividend. Secondly, the beneficial owner details in respect of dividends *in specie* are required to be submitted to SARS by either the company paying the dividend or by the regulated intermediaries involved. This is required as from 1 April 2012.

The requirements for the full solution can be obtained in the *External Business Requirements Specification for Dividends Tax Supporting Data File Structure* published on the SARS website www.sars.gov.za

On receipt of the information and on request from the entity, SARS will provide a pre-populated Dividends Tax return. The return will be consolidated from the supporting data received and will be issued to the channel from where the request was made.

CHANNELS FOR SUBMISSION

SARS will leverage off its existing electronic channel infrastructure to provide a mechanism for listed and unlisted companies to submit their DT returns and supporting data. The following channels will be available for submission:

- **e@syFile™**: The e@syFile™ solution will provide the ability to upload or capture the required supporting data. The data will be consolidated into the DT return which will be submitted to SARS. In addition an e@syFile™ user can create a manual disk that can be submitted over the counter at a SARS branch.

- **Direct Data Flow Channel (secure file transfer)/ Connect:Direct**: It is envisaged that this channel will mainly be used by regulated intermediaries acting as agents to administer the dividend distribution on behalf of listed companies. It will allow the taxpayer to extract the relevant supporting data from their respective information systems and upload the data in a prescribed format to SARS' systems. No manual intervention will be required from the taxpayer. SARS will consolidate the data and populate the DT return. The taxpayer will be able to login to eFiling to request and view the DT return. Data validations will be performed to ensure correctness and completeness. The ability to rectify any omissions or errors on the detail data will be provided. The taxpayer will be able to submit the DT return from the eFiling platform. It will reduce the overall administrative burden of data transfer and shorten data processing cycle times. This platform will provide faster feedback on the submission and possible review of declarations to taxpayers.

- **eFiling**: Companies with a small number of stakeholders (the limitations still needs to be determined) will be able to use this channel to capture the relevant supporting data. Similarly to the e@syFile™, the data will be consolidated into the DT return which will be submitted to SARS.

- **SARS branch:** Alternatively, companies will be able to create a Pipe Separated Values (PSV) encrypted disk from the e@syFile™ software. Entities with a small number of stakeholders will be able to submit the encrypted disk at a SARS branch where the relevant supporting data will be uploaded and the DT return will be submitted.

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