

EXTERNAL GUIDE

A QUICK GUIDE TO DIVIDENDS TAX

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1 INTRODUCTION

In 2007, the Minister of Finance announced that Secondary Tax on Companies (STC) would be replaced by Dividends Tax. The legislative foundation for the new Dividends Tax is to be found in sections 64D to 64N of the Income Tax Act, 1962 (the Act), and became effective on 1 April 2012.

The main objectives behind the change to Dividends Tax were to:

- Align South Africa with the international norm where the recipient of the dividend, not the company paying it, is liable for the tax relating to the dividend (with STC South Africa was one of a handful of countries with a corporate level tax on dividends).
- Make South Africa a more attractive international investment destination by eliminating the perception of a higher corporate tax rate (STC is an additional corporate tax) coupled with lower accounting profits (STC has to be accounted for in the Income Statement).

In simple terms, Dividends Tax is a tax imposed on shareholders on receipt of dividends, whereas STC is a tax imposed on companies on the declaration of dividends. The Dividends Tax is a withholding tax as it should be 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).

2 MAIN DIFFERENCES BETWEEN SECONDARY TAX ON COMPANIES AND DIVIDENDS TAX

	SECONDARY TAX ON COMPANIES (STC)	DIVIDENDS TAX
Underlying theory	Movement of an amount representing a profit / reserve to a shareholder outside company / group should attract tax	Payments/distributions (less CTC) to beneficial owners should attract tax <i>(Deemed dividends are an exception to this rule)</i>
Trigger	<ul style="list-style-type: none"> • Declaration or • Deemed declaration 	<ul style="list-style-type: none"> • Listed shares: actual payment • Unlisted shares: actual payment or date due and payable (whichever is first) • Dividends <i>in specie</i>: actual payment or date due and payable (whichever is first) • Debt owing to company during year (low / no interest): last day of the year of assessment
Liability for tax	Company	<ul style="list-style-type: none"> • Beneficial owner: Normal / cash dividends • Company: <i>In specie</i> dividends (including deemed dividends)
Counter parties	Company vs. Shareholder	Company vs. Beneficial owner (with the Withholder interposed)

Withholding / Payment to SARS	Company	<ul style="list-style-type: none"> • Company • Regulated intermediary
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3 RATE

The Secondary Tax on Companies rate was 10% at the time it was replaced with the Dividends Tax.

Unless one of the exemptions or a reduced rate is applicable, the Dividends tax rate is:

- 15% if the dividend was paid/payable before 22 Feb 2017; and
- 20% if the dividend is paid/payable on or after 22 Feb 2017

4 TAX LIABILITY

The liability for Secondary Tax on Companies 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 Dividends Tax is triggered by payment of the dividend, 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 other withholding agents. Dividends *in specie* is an exception to this general principle as the liability for the Dividends Tax falls on the company paying the dividend (as under STC), and is not transferred to the recipient. Further, there are certain transactions that are deemed to be dividends for purposes of the Dividends Tax (such as where low/no interest is charged in respect of a debt that arose by virtue of a share held in the company (see section 64E(4)); as well as certain cessions, share borrowings and share sales (see section 64EB)).

5 WITHHOLDING TAX

Dividends Tax is a withholding tax and should be withheld from dividend distributions and paid to SARS by the company paying the dividend or, where a regulated intermediary is involved, by the latter. The person liable for the Dividends Tax retains the ultimate responsibility to pay the tax should any of the withholding agents fail to withhold.

6 EXEMPTIONS

Under Secondary Tax on Companies 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 Dividends Tax the dividend payments could be exempt from Dividends Tax 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 regulated intermediary receives the required notifications (“declaration” and “undertaking” in the form prescribed by SARS) from the recipient prior to payment of the dividend. The recipient needs to submit both of the following:

- Declaration by Beneficial Owner
- Undertaking by Beneficial Owner – to inform SARS of future changes

Where the notifications as indicated are not submitted in time the withholding agent is required to withhold tax at the full rate. However, under these circumstances the beneficial owner has three years to submit the required notifications and claim a refund from the person who withheld the Dividends Tax from the dividend payment. 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)(i) and (ii) of the Act); persons referred to in section 10(1)(f) of the Act (CSIR, SANRAL etc); shareholder in a registered micro business (6th Schedule of the Act) insofar as the dividend does not exceed R200,000 per annum; non-resident beneficial owners of dividends received from SA listed non-resident companies; portfolio of a collective investment scheme in securities; any person insofar as the dividend constitutes income of that person; any person insofar as the dividend was subject to STC; fidelity or indemnity funds (section 10(1)(d)(iii)); and a natural person/deceased estate/insolvent estate insofar as the dividend is paid in respect of a tax free investment (section 12T(1)). Cash dividends paid by Real Estate Investment Trusts (REITs) or “controlled property companies” (section 25BB) are exempt if received or accrued before 1 January 2014.

Some dividend payments are **automatically exempt**, i.e. do not require the beneficial owner to submit a declaration and undertaking form in order to qualify, and they are:

- Dividends paid to “group companies” as defined in section 41; and
- Dividends paid to regulated intermediaries as defined in section 64D.

7 REDUCED RATES FOR FOREIGN RESIDENTS

Under Dividends Tax, 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 to hold between 10% and 25% of the share capital of the South African company paying 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 the withholding agent is required to withhold tax at the full rate (with similar refund rules as explained in par 6 above being applicable). Generally speaking, reduced rates were not possible under Secondary Tax on Companies.

8 LEVYING THE TAX

Dividends Tax is triggered by the payment of dividends by any:

- South African tax resident company; or
- Foreign company in respect of shares listed on the JSE (excluding dividends *in specie*).

Under Secondary Tax on Companies a declaration or deemed declaration of a dividend triggers the payment of STC, whereas under Dividends Tax it is the actual payment of the dividend or when an amount becomes due and payable (whichever is earlier) that triggers the payment of Dividends Tax. Where a debt is owing to the company (which arose by virtue of a share held in that company) during a year of assessment and an interest benefit is given in respect thereof the Dividends Tax is triggered on the last day of that year.

Dividends Tax is levied on:

- Amount distributed (normal/cash dividends)
- Value distributed (dividends in specie) – market value (not book/cost)

- Value forgone (interest benefit) – difference between market-related interest & what was paid.

For the rules in respect of deemed dividends arising from certain cessions, share borrowings and share sales please refer to section 64EB.

9 SECONDARY TAX ON COMPANIES (STC) CREDIT

The calculation of Secondary Tax on Companies is based on the net outflow of dividends (outgoing less incoming) in any particular “dividend cycle”, whereas Dividends Tax is based on the gross outflow of dividends with no reference to any period. Additionally, for a period of three years (i.e. up to 31 March 2015) the recipient’s liability for Dividends Tax can be reduced with the amount of any “STC credit” available to the company at the time of payment. 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 Dividends Tax (less any dividends paid). Foreign dividends cannot create STC credits.

The STC credit has to be utilised first and as a result the recipient may not choose to postpone using the STC credit until a later stage. The STC credit must be allocated pro rata based on shareholding. Where Dividends Tax is not withheld due to an inaccurate notification of the amount of an STC credit, the liability for the shortfall in Dividends Tax will fall on the company paying the dividend.

All STC credits expired on 1 April 2015.

10 DUAL LISTED COMPANIES

With regard to dual listed companies (foreign resident companies with shares listed in South Africa) any foreign withholding taxes paid (without any right of recovery) on these dividends may be deducted from any Dividends Tax due (which did not apply under STC). The amount of the rebate cannot exceed the amount of the Dividends Tax payable, and the withholding agent must obtain proof of any such foreign taxes paid before a rebate may be allowed.

11 DIVIDENDS TAX TRANSACTIONAL DATA

In order for SARS to effectively administer Dividends Tax 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 distribution chain are required to submit Dividends Tax transactional data. SARS agreed to a phased implementation approach in respect of the data requirements for the Full Solution to allow all stakeholders sufficient time to affect the required changes to their systems. The data requirements 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 are 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.

Non-individual beneficial owners who received dividends which were exempt from Dividends Tax (such as South African companies, pension funds, etc.), or where dividends tax was withheld, are 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.

The requirements for the submission of data can be obtained in the *External Business Requirements Specification (BRS) – Dividends Tax* published on the SARS website (www.sars.gov.za).

12 CHANNELS FOR SUBMISSION

A description of each channel is provided below:

- **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 Dividends Tax return which will be submitted to SARS.
- **Direct Data Flow channel (HTTPS/ Connect:Direct®):**
It is envisaged that this channel will mainly be used by regulated intermediaries acting as agents to administer the distribution of the dividends 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's systems. No manual intervention will be required from the taxpayer. SARS will consolidate the data and populate the Dividends Tax return. The taxpayer will be able to login to eFiling to request and view the Dividends Tax 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 can submit the Dividends Tax return from the eFiling platform. It will reduce the overall administrative burden of data transfer and shorten data processing cycle times.
- **eFiling:**
Dividends taxpayers with limited transactional data (20 transactions per submission) will be able to use this channel to capture the relevant dividend transactional data and submit it to SARS.
In addition, dividends taxpayers will be able to request verify and submit a pre-populated Dividends Tax return to SARS (pre-populated from the transactional data submitted).
- **SARS branch:**
Dividends taxpayers with limited transactional data (20 transactions per submission) will be able to use this channel to capture the relevant dividend transactional data and submit it to SARS.
In addition, dividends taxpayers will be able to request verify and submit a pre-populated Dividends Tax return to SARS (pre-populated from the transactional data submitted).

13 PAYMENTS, RECOVERY AND ADMIN

13.1 PAYMENT OF LIABILITY

Under Secondary Tax on Companies (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 Dividends Tax the payment of the tax will normally not be made by the party liable for the tax (i.e. 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 Dividends Tax is triggered). 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 beneficial owner 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.

13.2 RETURNS

Under Dividends Tax a return must be submitted to SARS by each entity that is involved in the dividend distribution chain, on or before the end of the month following the month in which the Dividends Tax is triggered. In the return the withholding agent must account 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. 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). The supporting information and return can be submitted through various channels (as discussed above).

13.3 REFUNDS UNDER THE DIVIDENDS TAX DISPENSATION

Refunds are dealt with differently under the new Dividends Tax dispensation as refunds should be claimed from and paid by the withholding agent (company or regulated intermediary) who withheld the Dividends Tax. Beneficial owners have a period of three years from the date of payment of the dividend to submit any outstanding documentation to the relevant party and claim a refund. Withholding agents should utilise any future Dividends Tax withheld by them as a source for the refunds. In limited circumstances (i.e. where the company was the withholding agent and future withholdings are insufficient, and at least a year has lapsed) the withholding agent may make a recovery claim from SARS (i.e. no direct refund claims by beneficial owners are allowed).

13.4 OTHER

The remaining administrative provisions such as the levying of interest, estimated assessments, etc. remain substantially similar under Dividends Tax as they were under Secondary Tax on Companies.

14 DIVIDENDS TAX PAYMENT PROCESS AT A GLANCE

	SECONDARY TAX ON COMPANIES	DIVIDENDS TAX
Payment date	End of month following month wherein dividend cycle ends	End of month following month wherein the Dividends Tax is triggered
Returns	To accompany payments of tax only	To be submitted in respect of all dividend payments and receipts (where the recipient is exempt)
Failure to withhold / pay	Remains company's liability	Could become liability of "person" who failed to withhold / pay

Personal liability	No specific provision	Unlisted companies: the person who controls / regularly involved in financial affairs & shareholder / director is personally liable for tax, additional tax, penalty and interest for which the company or RI is liable
Estimated assessments	Yes	Yes
Failure to pay on time	Interest accrues on a daily basis	Interest accrues on a daily basis
Assessment & Recovery of tax	Provisions re assessment & recovery of normal tax & additional tax apply	Provisions re assessment & recovery of tax & administrative penalties apply
Refunds	Normal refund provisions (section 102) applied to refunds claimed from SARS	Withholding by company must be refunded from: <ul style="list-style-type: none"> • Future withholdings by company (one year) • Excess to be claimed from SARS (after one year) • Claims to be made within three to four years of dividend payment date Withholding by RI to be refunded from: <ul style="list-style-type: none"> • Future withholdings by RI (any withholding) • No recovery from SARS possible

15 GLOSSARY OF TERMS

- **“beneficial owner”** – person entitled to benefit of the dividend attaching to a share
- **“company”** – normal tax meaning
- **“dividend”** – includes both section 1 definitions of *dividend* (essentially any payment by SA resident companies to a shareholder, excluding contributed tax capital or shares of the company) & *foreign dividend* (cash dividends paid by SA listed non-residents)
- **“regulated intermediary”** – withholding agents – applies only to listed/regulated environment (Central Securities Depository Participants, authorised users, approved nominees, Linked Investment Service Providers, Collective Investment Schemes in Securities & SARS approved transfer secretaries)

DISCLAIMER

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

For more information about the contents of this publication you may:

- Visit the SARS website at www.sars.gov.za
- Visit your nearest SARS branch
- Contact your own registered tax practitioner
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 7277
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).