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MoneyTalk

Dividend Withholding Tax

What impact will this new tax have? What role will intermediaries play? Who does the liability for payment rest with?

THE REVENUE Laws Amendment Bill which passed through the stages from Bill to Act last month gives a foretaste of the dividend withholding tax regime that will replace Secondary Taxation on companies (STC). The changes will come into effect after the giving of three months' notice of their intended introduction by the minister by notice in the Gazette.

Definition of "dividend"
The first issue as to what constitutes a dividend will depend upon whether the company from which the dividend is derived is tax resident in the Republic. If it is not, the current definition of dividend will continue to apply. If it is SA tax resident, then a new regime will apply. This will be based upon the "contributed tax capital" of the company. A dividend will be any amount that is distributed by a resident company to its shareholders to the extent that it is not paid out of contributed tax capital.

Contributed tax capital is effectively that portion of the capital that has been contributed by the shareholders out of after-tax income. In the case of shares issued on or after 1 January 2009 in exchange for assets, where the shareholder holds more than 20% of the shares, the value of the contributed tax capital will be equivalent to the value of the assets so contributed as is taxed in the shareholder's hands. There will therefore be a difference between the contributed capital recorded for accounting purposes and the contributed tax capital if a capital gain on contribution of an asset is exempt or entitled to rollover relief. Further, the contributed tax capital will have to be identified in relation to each class of shareholder, and will be deemed to have been contributed pro-rata based on the proportion of shares held in relation to the total number of shares in the class.

Dividends tax
A dividends tax will come into operation, and STC will be terminated simultaneously with its introduction. The rate of tax will be 10%. The intent is that companies should withhold tax at 10% on any dividend paid unless the recipient is exempt from the tax. Exempt persons include SA resident companies, the State, provincial and local authorities, parastatal organisations exempt from tax, retirement and benefit funds, public benefit organisations, and mining rehabilitation funds.

Certificated and uncertificated shares
The legislation requires that companies that issue certificated shares should withhold dividends tax on any dividend declared and paid in respect of such shares. Companies are not required to withhold tax on dividend payments where the shares are uncertificated. It is understood that the rationale for this is that the shares are all registered initially in an intermediary, which then administers a sub-register for the dematerialised shares. The company therefore typically deposits the dividend into an account administered by the intermediary, which administers the distribution to shareholders.

Exemption and treaty reduction on declaration
In the event that the beneficial owner shall have issued a written declaration that it is exempt and that it will inform the company should it cease to be the beneficial owner, or if the beneficial owner forms part of the same group of companies as the company paying the dividend, it shall not be liable to withhold and pay the tax. Provision is also made for a nonresident beneficial owner that will enjoy reduced withholding by reason of a double taxation agreement to file a declaration to this effect and undertaking that it will inform the company should it cease to be a beneficial owner. Declarations of exemption or entitlement to reduced withholding will terminate on the earlier of the beneficial owner's ceasing to be the beneficial owner, or a period of three years.

Intermediaries
Where dividends are paid to an intermediary, such as a stockbroker, nominee company, fund manager, or any other person who manages portfolios on behalf of investors, the intermediary will be obliged to account for the dividends tax on dividends that are paid to a beneficial owner. The intermediary is relieved from liability to withhold on dividends in respect of certificated shares, if the dividends tax has been paid by another person, or if the beneficial owner has confirmed its exempt status by written declaration and undertaking to notify the intermediary should it cease to be the beneficial owner. In relation to dividends on uncertificated shares, the intermediary need not withhold dividends tax if the register it retains indicates that the person to whom the dividend is paid is exempt, unless that person has in writing directed that dividends tax be withheld, or if the dividend is paid to a regulated intermediary. Similar provisions are in place for notification to be given to an intermediary concerning exempt status or entitlement to reduced withholding.

Liability ultimately with the beneficial owner
If the dividend tax has not been withheld and the beneficial owner is not an exempt person, the beneficial owner is liable for the dividends tax.

STC credits
Companies that have unutilized STC credits will be able to utilise these credits for a period of up to five years, after which entitlement to credit will lapse. However, credits will be allocated automatically and pro-rata to the total dividend and not, as previously, only to the portion of the dividend that is not exempt from the tax. It will be the responsibility of the company to notify the recipient in writing of the extent to which the dividend is offset by STC credits.

Companies will be deemed to have declared a dividend on the day prior to which the dividend withholding tax comes into effect. This will be the last dividend cycle under STC and will fix the balance of STC credits that a company may apply in favour of its shareholders. Thereafter, the STC credit pool will increase by the amount of notified STC offsets in its dividend accruals, and decrease by the allocation of STC credits to its dividend distributions. On the fifth anniversary of the introduction of the dividend tax the STC pool will be deemed to be zero. The notification and management of the STC pool will place an added administration burden on companies and intermediaries.

Date for payment
The dividends tax must be paid not later than the last day of the month following the month in which the dividend has been paid, unless some other person has paid the dividends tax.

Refund of overpayments
If dividends tax has been overpaid, the beneficial owner may notify the person that has overpaid and claim recovery of the tax overpaid, which may be adjusted out of the next subsequent dividend withholding tax obligation of that person. Should recovery not have been effected within one year, application for refund may be made to SARS, provided that SARS will not refund any amount where application is made more than three years after payment.

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