Dividend tax

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        Cr. Shareholder for dividends
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Definition of “Dividend”

“dividend” means

- **any amount** transferred or applied by a **company that is a resident**
- for the **benefit** or on behalf of **any person** in respect of any **share** in that company whether that amount is transferred or applied—
  (a) by way of a **distribution** made by
  (b) as consideration for the **acquisition of any share** in that company

- but <u>**does not include**</u> any amount so transferred or applied to the extent that the amount so transferred or applied—
  (i) results in a **reduction of contributed tax capital** of the company
  (ii) constitutes **shares** in the company
  (iii) constitutes an acquisition by the company of its own securities by way of a **general repurchase** of securities as contemplated in subparagraph (*b*) of paragraph 5.67(B) of section 5 of the **JSE** Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.84 of section 5 of the JSE Limited Listing Requirements

Definition of "Beneficial owner"

The person entitled to the benefit of the dividend attaching to a share.

- A nominee or an agent?

Basics

- From 1 April 2012: 15%
- From 22 February 2017: 20%
- Can be reduced if a DTA exists
- If paid by
  - SA resident company (cash and in specie)
  - Non-resident dual-listed company (only cash)
- If not in Rand?

Timing

- End of the month following the month of payment
- What is payment?
  - Listed company making cash distribution: Date of actual payment
  - Other: Earlier of date on which dividend is paid or date that dividend becomes due and payable

Example (SARS Dividend tax guide)

- Company E Ltd declared a dividend in cash of R100 000 on 31 January 2013, payable to holders of shares registered on Friday 22 February 2013 (record date). The dividend was paid to holders of shares on Monday 25 February 2013, the next business day.

- *Solution*
- Under s 64E(2)(*a*)(i) the dividend is deemed to be paid on the date on which the dividend is paid by Company E Ltd, namely, 25 February 2013.
- What would be the date of "payment" if Company E is not a listed company?

Working: Cash distribution

Company

- Declares R100
- Withholds R20 dividend tax
- Pays R80 to beneficial owner

Beneficial owner

- Receives R80
- Includes R100 in taxable income
- Exempts R100 in terms of section 10(1)(k)

Working: In specie distribution

Company

- Declares asset with CP of R80 and MV of R100
- Value of dividend = MV of R100
- Can’t withhold anything
- Distributes asset
- Pays R20 to SARS

Beneficial owner

- Receives asset at deemed R100 value
- Deal with asset normally (trading stock or capital in nature asset)
- Includes R100 in taxable income
- Exempts R100 in terms of section 10(1)(k)

Exemptions

- Dividends are exempt from dividends tax if the beneficial owner is:
  - a company which is a resident; (s64F(a))
  - the Government, a provincial administration or a municipality; (s64F(b))
  - a public benefit organisation approved by the Commissioner (s64F(c))
  - a trust contemplated in section 37A (closure rehabilitation trust); (s64F(d))
  - an institution, board or body contemplated in section 10 (1) (cA) (institutions providing scientific knowledge, institutions providing necessary or useful commodities to the State, institutions providing financial assistance to promote commerce, industry or agriculture) (s64F(e))
  - a pension, provident, retirement annuity or benefit fund, including pension provident or retirement annuity preservation funds (s64F(f))
  - parastatals such as CSIR, SAIDC, SANRAL (s64F(g))
  - a shareholder in a registered micro business (to the extent of R200 000) (s64F(h));
  - a person that is not a resident of SA and the dividend is paid by a non-resident listed company on the JSE and the dividend is not a dividend in specie.s64F(j))
  - a portfolio of collective investment scheme in securities (s64F(k))
  - any person to the extent that the dividend constitutes income for that person (s64F(l))

Example

- Company XYZ Ltd (a resident of South Africa) declared and paid a dividend of R10 per share to each of its shareholders. The company has the following shareholders:
  - ABC (Pty) Ltd owns 10 000 shares
  - DEF Pension fund holds 20 000 shares
  - KLM (a Australian resident company) holds 30 000 shares. The double tax agreement between South Africa and KLM stipulates that the dividend tax rate needs to be reduces to 5% should the shareholding exceed 20%.
  - 40 000 shares are held by natural persons who are residents of South Africa.

Shareholding	Dividend tax
ABC (Pty) Ltd owns 10 000 shares	R0 (beneficial owner is company)
DEF Pension fund holds 20 000 shares	R0 (beneficial owner is pension fund)
KLM (a Australian resident company) holds 30 000 shares. The double tax agreement between South Africa and KLM stipulates that the dividend tax rate needs to be reduces to 0% should the shareholding exceed 20%.	Shareholding: 30 000 / 100 000 = 30% Therefore, dividend tax reduced to 5% Therefore, 30 000 x R10 x 5% = R15 000
40 000 shares are held by natural persons who are residents of South Africa.	40 000 x R10 x 20% = R80 000

Automatic exemption

- No declaration and undertaking necessary
- Paid to regulated intermediary (definition in section 64D - Regulated intermediaries are various organisations that receive dividends on behalf of others (e.g. brokers, collective investment schemes, unit trusts etc)).
- Declared between companies that form part of the same group of companies

Deemed dividend – Loans (Section 64E(4))

Low or interest free loan given by a company to a shareholder who is:

- a connected person to the company OR
- a connected person to any connected person of that company AND
- Is a resident AND
- Is not a company

- Deemed dividend in specie on the last day of the year of assessment

- Interest based on official interest rate *less* interest actually charged
  - What if interest actually charged > interest based on official interest rate?

Who is a connected person of a company?

- Any other company in the same group of companies, where a group of companies consists of a controlling group that
  - Directly holds more than 50% of the equity shares or voting rights in at least one controlled group company; and
  - Directly or indirectly holds more than 50% of the equity shares or voting rights in each controlled group company
- Any person (excluding companies) that holds 20% or more voting rights or equity shares in the company
- Any company who holds 20% or more of a company's equity shares or voting rights (but only if no other ho0lder of shares holds the majority of voting rights in the company)
- Any other company, if the company is managed or controlled by a connected person
- Any company that would be part of the same group of companies as defined

Example

- Mr. Shareholder holds a 30% interest in Company X (Pty) Ltd. On 1 December 2016 Company X (Pty) Ltd made R1 000 000 available to Mr. Shareholder at a 3% interest rate.

- Solution
  - Mr. Shareholder is a connected person of Company X (Pty) Ltd (since his shareholding exceeds 20%)
  - The deemed dividend in specie arises on 28 February 2017 of: R1 000 000 x (8% - 3%) x 3/12
  - = R12 500
  - Therefore, dividend tax of R12 500 x 20% = R2 500 must be paid to SARS by 31 March 2017

What is CTC?

- Consideration received / accrued for issue of shares
- Calculated for each class of share separately

Stated share capital (no par value shares)
OR
Share capital + Share premium (par value shares)

LESS:
Capitalised revenue reserves

ADD / LESS:
- Movements between reserves

ADD:
Consideration received / accrued for issue of new shares

Example

- The following information has been presented for Company ABC Ltd:

Reserve	Value as at 1 January 2011
Share capital	R100 000
Share premium	R20 000

- Included in the share premium is R5 000 of retained earnings that have been capitalised
- ABC Ltd issued an additional 1 000 shares at R5 000 during the year

Solution

Share capital	R100 000
Share premium	R20 000
Capitalised reserves	(R5 000)
New share issue	R5 000
CTC	R120 000

Example

ABC (Pty) Ltd entered into the following transactions during the year of assessment. Calculate the impact (if any) on CTC:

- Company DEF wants to invest in ABC and gives a piece of land with an original cost price of R10 000 000 and a market value of R15 000 000 to ABC in exchange for the issue of 100 000 shares
- 5 000 new shares are issued at a cash consideration of R10 each
- A rights issue is made by ABC. 10 000 new shares are issued at R5 per share when the market value is R7 per share
- Capitalisation issue 1: 1 for 1 issue of R500 000 funded out of reserves
- Capitalisation issue 2: 1 for 1 issue of R200 000 funded our of share premium

Solution

Transaction	Effect on CTC
Company DEF wants to invest in ABC and gives a piece of land with an original cost price of R10 000 000 and a market value of R15 000 000 to ABC in exchange for the issue of 100 000 shares	R15 000 000 added to CTC in exchange for the issue of 100 000 shares
5 000 new shares are issued at a cash consideration of R10 each	5 000 x R10 = R50 000 added to CTC in exchange for the issue of 5 000 shares
A rights issue is made by ABC. 10 000 new shares are issued at R5 per share when the market value is R7 per share	10 000 x R5 = R50 000 added to CTC as new capital
Capitalisation issue 1: 1 for 1 issue of R500 000 funded out of reserves	No effect, no new capital is introduced
Capitalisation issue 2: 1 for 1 issue of R200 000 funded our of share premium	No effect, no new capital is introduced

How do I treat distribution of CTC?

- Section 76B(2)
  - Reduce the BC of the investment with the distribution
  - Therefore, no immediate CGT consequences
- Section 76B(3)
  - If distribution of CTC > BC
    - Excess is treated as a capital gain

Late payment of dividend tax

- Company ABC (Pty) Ltd pays an amount of R1 000 000 to a regulated intermediary.
- The regulated intermediary distributes R800 000 to beneficial owners on 28 February 2017 and pays dividend tax of R200 000 to SARS on 12 May 2017.

- Who will be liable for the interest?
- Which period will be subject to interest charged?

Example

Mr. Shareholder holds 30% shares in ABC (Pty) Ltd that he acquired at R50 000 during 2013. ABC (Pty) Ltd makes a CTC distribution to beneficial owners during the year of assessment.

(A) What will be the tax consequences if the CTC distribution is R100 000?

(B) What will be the tax consequences if the CTC distribution is R200 000?

Solution

	Example (A)	Example (B)
Base cost	R50 000	R50 000
CTC distribution	R100 000 x 30% = R30 000	R200 000 x 30% = R60 000
Reduced BC	R20 000	R0
Capital gain	R0	R10 000

Refunds

- Process
  - Must be claimed back from company by beneficial owner within 3 years
  - Company refunds beneficial owner and must claim a “refund” from SARS
  - In first year – set off against dividend tax to be withheld from future distributions
  - Thereafter – company must claim the refund back from SARS

Link with VAT

<u>Cash</u>

- No VAT (money is excluded from the definition of goods and services)

<u>In specie</u>

- Deemed supply (change in use adjustment) based on MV
- Therefore, account for output VAT <u>ONLY IF INPUT VAT WAS CLAIMED ORIGINALLY</u>

Tax implications for the shareholder

- For both cash and dividends in specie:
  - The gross amount must be included in gross income per par (k) of the gross income definition
  - Possible exemptions in terms S10(1)(k) and S10B
  - Expenditure incurred to earn the dividend (if shareholder is not a sharedealer) is not allowed as a deduction as it is not in the production of “income” as defined and prohibited by S23(f)
  - 1/3 of interest paid on the acquisition of **listed** shares can be added to BC (Par 20(g) of 8th Schedule).

Tax implications for the shareholder

- For dividends in specie:
  - Input VAT cannot be claimed
    - Consideration = R0
  - If asset is trading stock
    - Deemed opening stock deduction at MV
  - If asset is a capital in nature
    - Deemed to be acquired at MV
    - Therefore, BC = MV on date of acquisition
    - Can claim section 11(e) wear-and-tear on MV on date of acquisition (if used for trade purposes)

Section 9C

- If shares are held by a share dealer
  - Shares constitute trading stock
  - Use normal trading stock provisions, except valuation of financial instruments will be at CP
- If shares are held > 3 years
  - Shares become capital in nature
  - Leads to a recoupment of deduction previously claimed upon the disposal of the shares

Example

- Company ABC Ltd bought 10 000 shares in DEF Ltd on 1 January 2012 for R100 000 for speculative purposes.
- Company ABC has a 31 December year-end.
- ABC Ltd transacted with the shares as follows:

22 February 2013	1 000 shares	R15 000
5 December 2015	3 000 shares	R48 000
18 November 2016	6 000 shares	R70 000

Solution

<u>2012</u>	
Purchases– s11(a)	(100,000)
Closing stock	100,000
<u>2013</u>	
Opening stock	(100,000)
Gross income	15,000
Closing stock (9 000 / 10 000 x R100 000)	90,000
<u>2014</u>	
Opening stock	(90,000)
Closing stock	90,000

Solution cont

- **2015**

Opening stock		(90,000)
Reversal stock deduction section 9C(5) (3 000 / 10 000 x R100 000)		30,000
Proceeds CGT	48,000	
Base cost (3 000 / 10 000 x R100 000)	(30,000)	
Capital gain	18 000	
Taxable capital gain at 66.6%		12 000
Closing stock (6 000 / 10 000 x R100 000)		60,000

- **2016**

Opening stock		(60,000)
Reversal stock deduction section 9C(5)		60,000
Proceeds CGT	70,000	
Base cost	(60,000)	
Capital gain	10 000	
Taxable capital gain at 80%		8 000

Dividend tax returns

- Who must complete these returns?
  - A company that pays a dividend *in specie*
  - A company that pays a dividend other than dividend *in specie*
  - A regulated intermediary that pays a dividend that was declared by a company
  - A person that received an exempt dividend under s 64F
  - A person that received an exempt dividend under s 64FA
- DTR01
  - Transactional data
  - Limited to 20 transactions in total
- DTR02
  - Input section, output section, liabilities section