

Dividends Tax Q&A

What you need to know about Dividends Tax

On 1 April 2012 the new Dividends Tax (DT) replaces Secondary Tax on Companies (STC). Set out below are some of the more common questions that affected parties are asking.



1 When does the Dividends Tax (DT) come into effect?

1 April 2012 and applies to dividends declared from that date.

2 What happens to STC?

The current STC regime will no longer apply when DT comes into operation, i.e. STC will end at the end of the day on 31 March 2012.

3 What is the DT rate?

DT is chargeable at the rate of 15%.

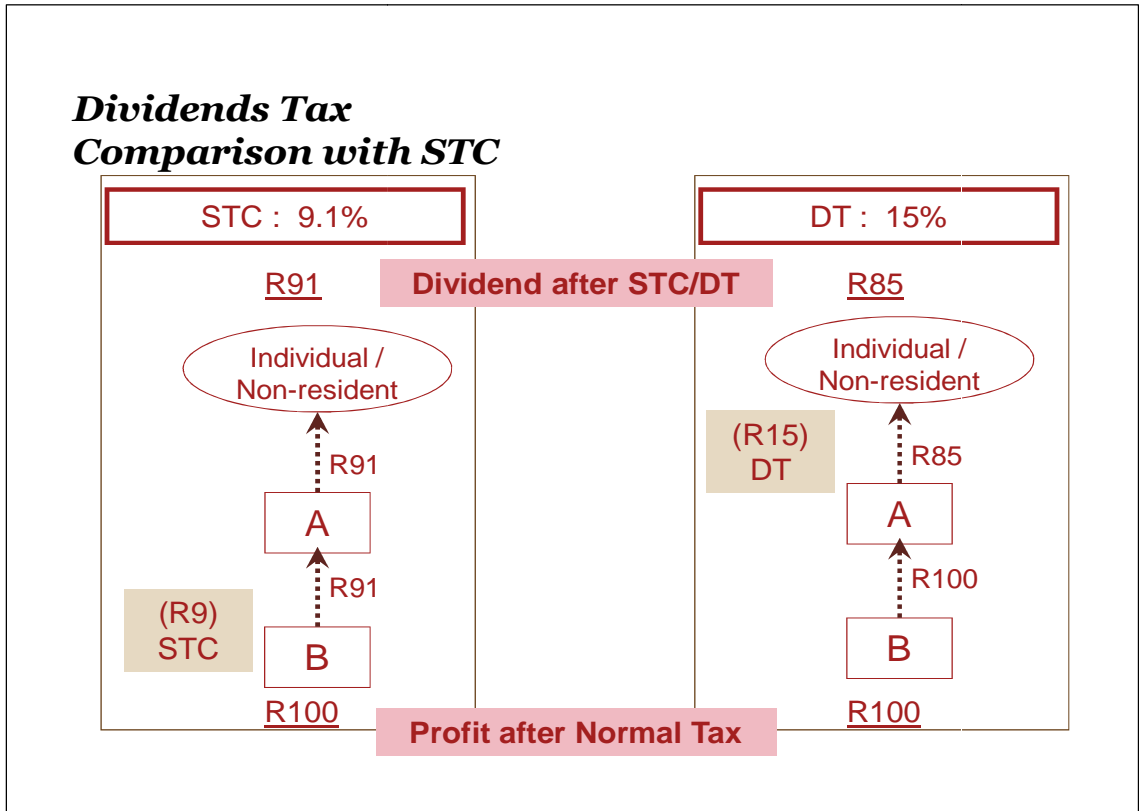
4 How will DT differ from STC?

Apart from the rate, DT is a fundamentally different tax from STC in two respects.

First, whereas STC is a tax on the declaring company, DT is a tax on the shareholder —or, more specifically, the “beneficial owner” of the dividend (in the case of cash dividends).

Secondly, DT is a “withholding tax”.

The only exception to this default position is in the case of dividends in specie and deemed dividends, i.e. the DT rules on in specie dividends and deemed dividends are in fact very similar to the STC rules.



The diagram above sets out the difference between the two regimes where a company (B) has distributable reserves of R100.

- Under STC, B declares a dividend of R91, whilst providing for STC of R9 to be paid to SARS.
- Under DT, B will make a dividend declaration of the full R100. As it pays to an exempt party (A), no DT is withheld and the full R100 is paid to A. DT of R15 will be withheld from the R100 by A and paid over to SARS when A on-declares the amount to a non-exempt person.

5 What is a “withholding” tax?

The person liable for the tax is the person receiving the payment. However, the duty of paying the tax is placed on the person making the payment, who has to deduct the tax from the payment, pay the tax to SARS and pay the balance of the payment (after tax) to the recipient.

In this sense, DT is similar to Employees’ Tax that is deducted by an employer. That is, the person who actually suffers the tax is the *recipient*, but it is the *payer* that is responsible for the compliance and administration burden with SARS.

6 What triggers DT?

Unlike in the case of STC (which is triggered by “*declaration*”), the DT rules are triggered by *payment*. Specifically, DT is triggered on the earlier of when the dividend “*is paid or becomes payable*” in the case of an unlisted company and on payment in the case of a listed company.

Because the final STC “dividend cycle” of all SA-resident companies will be deemed to end on 31 March 2012, a final “net dividend” calculation will be required.

7 What do companies need to do on 1 April 2012?

Because the final STC “*dividend cycle*” of all SA-resident companies will be deemed to end on 31 March 2012, a final “net dividend” calculation will be required —i.e. covering the final dividend cycle period ended 31 March 2012.

Unless a company actually declares (or is deemed to declare) a dividend on 31 March 2012, no STC liability will arise. Instead companies should determine the balance of the “STC credit” amount to be carried forward into the DT system. (STC credits are discussed later.)

8 What dividends are subject to DT?

As a general point-of-departure, DT is chargeable on any dividend⁽¹⁾ paid by any SA-resident company⁽²⁾.

⁽¹⁾ Note that the SA Income Tax Act has a specific “*dividend*” definition which in some cases differs from the company law concept of a dividend.

⁽²⁾ Other than “headquarter companies”.

9 Are foreign companies liable to withhold DT?

Only so-called “dual-listed” foreign companies will have a withholding obligation. So the only case in which a dividend from a non-resident company could be subject to DT is in respect of its shares that are listed on the JSE.

10 When is a company NOT liable to withhold DT?

There are three cases in which companies do not have any obligation to withhold DT on dividend payments, namely if:

- (a) the beneficial owner is another company in the same “*group of companies*” as the paying company; or
- (b) the recipient is a “*regulated intermediary*” (“RI”); or
- (c) the recipient has submitted the appropriate exemption declarations to the paying company.

Note that the reference to “*group*” in item (a) above, is a specifically defined term (in s41 ITA) requiring a 70% equity shareholding and which would normally exclude foreign companies.

Note also that item (b) above (RIs) does not mean that the dividend is exempt from DT. Rather, it simply means that the withholding-related obligations are passed on from the declaring company to the RI.

11 Which shareholders are exempt from DT?

Note that DT exemptions are granted with reference to the “*beneficial owner*” of the dividend, i.e. the person who is entitled to the benefit of the dividend —which in most cases will be the shareholder, but in some cases might be a different person. The commentary below simply uses the term “shareholders”.

In the case of cash dividends from SA-resident companies, there are eleven (11) categories of exempt shareholders, namely:

- (a) SA-resident companies;
- (b) the SA government (local, provincial and national);
- (c) public benefit organisations (as defined – s30(3) ITA);
- (d) certain types of environmental rehabilitation trusts (s37A);
- (e) certain types of tax exempt institutions, like some research institutions (if exempt under s10(1)(cA));
- (f) retirement funds and medical schemes (s10(1)(d));
- (g) certain other specified exempt entities like the CSIR, SANRAL, etc. (s10(1)(t));
- (h) shareholders of “micro-businesses”, but only the first R200,000 of dividends (per annum);
- (i) collective investment schemes in securities (share unit trusts);
- (j) any person to the extent that the dividend is not exempt from income tax (e.g. dividends on restricted share scheme shares);
- (k) any person to the extent that the dividend was subject to STC.

Another way of looking at it is that the main taxable targets are natural persons, most trusts, and all non-residents. The last 2 exemptions are designed to relive double taxation.

In the case of cash dividends from dual-listed foreign companies, non-resident shareholders are also exempt in addition to the above exemptions.

12 How do shareholders claim/apply the exemptions?

The majority of the DT exemptions do *not* apply automatically.

Rather, shareholders are required to specifically submit exemption declarations to the payer (the declaring company or the “*regulated intermediary*” (RI)) before the date of payment of the dividend. If the requisite declarations are not submitted on time, the payer will deduct 15% DT from the dividend (and pay it over to SARS) and pay only 85% of the dividend to the shareholder.

If a shareholder submits the correct declaration after the deadline, the shareholder should qualify for a refund. (See also Questions 21 – 23 below.)

The majority of the DT exemptions do not apply automatically. Shareholders are required to submit exemption declarations to the payer before the date of payment of the dividend.

13 How do the exemption declarations work?

The declaration forms are prescribed by SARS.

The form would normally be issued by the payer (i.e. the declaring company or the RI), who would normally also set a due date for the submission of completed declarations.

Apart from the information-gathering section of the form, it contains two main parts, namely:

- the exemption declaration, where the beneficial owner selects and confirms which exemption applies (see also Q10 above);
- an undertaking by the dividend-recipient (which in some cases might be different from the beneficial owner), to inform the payer if the beneficial owner changes.

Please also see Questions 21 – 23 below regarding late declarations and refunds.

14 What must a company do before paying a dividend?

The following three-step process is recommended:

- (1) First, arrange dividend-recipients into the following three categories, namely:
 - (i) where the recipient is a “*regulated intermediary*” (“RI”);
 - (ii) where the beneficial owner is another company in the same “*group of companies*” as the paying company; and
 - (iii) all other recipients.
- (2) Next, the company needs to communicate with all the “other” recipients (item (iii) above) to:
 - request that they complete the prescribed declaration forms (as prescribed by SARS); and
 - inform them of the due date when the declarations must be returned to the company. (Note that if the company does not specify a date, then the dividend payment date is automatically deemed to be the due date for the declarations.
- (3) Finally (before payment), the company will analyse the declarations received to determine whether recipients are entitled to full exemption, or to a reduced rate, or to no relief at all.

Thus, as a result of the process above, the company should be able to separate recipients into one of the following five categories, namely:

- (a) No withholding (i.e. 100% of the recipient’s dividend will be paid to the recipient) because the recipient is a RI; or
- (b) No withholding (i.e. 100% of the recipient’s dividend will be paid to the recipient) because the beneficial owner is another company in the same “*group of companies*” as the paying company; or
- (c) No withholding (i.e. 100% of the recipient’s dividend will be paid to the recipient) because the company has received the required exemption declaration from the recipient; or
- (d) Reduced rate withholding (i.e. DT of less than 15% is due to SARS, so more than 85% of the recipient’s dividend will be paid to the recipient) because the company has received the required “reduced rate” declaration from the recipient. This is only relevant in the case of non-resident shareholders who qualify for a reduced withholding rate in terms of a double tax agreement (“DTA”) between their home country and SA; or
- (e) Full withholding (i.e. DT of 15% is due to SARS, so only 85% of the recipient’s dividend will be paid to the recipient) because the company has not received any declaration from the recipient.

15 Are listed companies treated differently from unlisted companies?

Yes. Although listed companies are not specifically dealt with separately in the DT rules, the practical position is that listed companies will have very little (or no) withholding obligations. This is because the vast majority (or all) of their dividend distributions will be paid to RIs, and thus the withholding obligation is automatically passed on to the RI. (Unlisted companies may in some cases pay some dividends to RIs, but this is less common.)

16 What is a regulated intermediary (RI)?

As the name suggests, RIs are conduit entities through which the dividend flows from the declaring company to the beneficial owner of the dividend.

The RI is neither the declarer nor the beneficial owner, but may end up having the administration responsibility.

The main categories of RIs are:

- central securities depository participants (“CSDPs”). At present (March 2012) there are 8 CSDPs.
- “*authorized users*” in terms of the Securities Services Act—which essentially refers to stock brokers;
- certain approved “nominees”;
- portfolios of collective investment schemes (unit trusts) in securities; and
- certain approved transfer secretaries.

RIs are conduit entities through which the dividend flows from the declaring company to the beneficial owner of the dividend.

17 What must a RI do before on-paying a dividend?

The following three-step process is recommended:

- (1) First, arrange dividend-recipients into the following two categories, namely:
 - (i) where the recipient is itself also a RI or a vesting trust the sole beneficiary of which is another RI; and
 - (ii) all other recipients.
- (2) Next, the RI needs to communicate with all the “other” recipients (item (ii) above) to:
 - request that they complete the prescribed declaration forms (as prescribed by SARS) where appropriate; and
 - inform them of the due date when the declarations must be returned to the RI. (Note that if the RI does not specify a date, then the dividend payment date is automatically deemed to be the due date for the declarations.)

- (3) Finally (before payment), the RI will analyse the declarations received to determine whether recipients are entitled to full exemption, or to a reduced rate, or to no relief at all.

Thus, as a result of the process above, the RI should be able to separate recipients into one of the following four categories, namely:

- (a) No withholding (i.e. 100% of the recipient's dividend will be paid to the recipient) because the recipient is itself also a RI or a vesting trust where the sole beneficiary is a RI; or
- (b) No withholding (i.e. 100% of the recipient's dividend will be paid to the recipient) because the RI has received the required exemption declaration from the recipient; or
- (c) Reduced rate withholding (i.e. DT of less than 15% is due to SARS, so greater than 85% of the recipient's dividend will be paid to the recipient) because the RI has received the required "reduced rate" declaration from the recipient. This is only relevant in the case of non-resident shareholders who qualify for a reduced withholding rate in terms of a double tax agreement ("DTA") between their home country and SA; or
- (d) Full withholding (i.e. DT of 15% is due to SARS, so only 85% of the recipient's dividend will be paid to the recipient) because the RI has not received any declaration from the recipient.

18 When must the DT be paid over to SARS?

The payment to SARS is due by the end of the next month following the month in which the dividend payment is made. Thus, if the payer (i.e. the declaring company or a RI) has paid out the dividend and withheld the appropriate DT in January (for example), the DT payment to SARS is due on the last business day of February.

This is similar to the STC system.

The DT payment to SARS is due by the end of the next month following the month in which the dividend payment is made.

19 Must exemption declarations be obtained for each dividend?

No. New exemption declarations are only required if there is a change in either:

- the recipient (the person to whom the dividend is paid); or
- the "beneficial owner" of the dividend.

It is noted that the recipient will in most cases in fact be the beneficial owner, but it is not uncommon for them to be separate persons.

If the recipient changes, the payer is automatically expected to request a new declaration in advance of the next dividend payment. If the recipient and the beneficial owner are separate persons, and the beneficial owner changes, the recipient is obliged to inform the payer of the change.

20 Must a RI obtain a separate exemption declaration in respect of each share administered?

No. If a single recipient has entitlement to several different shares that are administered by the RI, the RI need only obtain one single declaration form from that recipient (in respect of all the relevant shares.)

21 What if an exempt recipient does not submit the required declaration?

Full DT (15%) must be withheld, so only 85% of the dividend will be paid to that recipient.

Unless the recipient is a RI, or the beneficial owner is in the same “*group of companies*” as the declaring company, the 0% withholding can only be applied if the payer (i.e. declaring company or RI) has received the necessary exemption declaration from the recipient.

Similarly, if a recipient qualifies for a reduced rate under a double tax agreement, the payer cannot apply the reduced rate unless an appropriate declaration is received.

22 What if a recipient submits the required declaration late?

Recipients who qualify for an exemption or for a reduced rate can still submit their declarations up to three (3) years after the payment of the dividend.

In such cases, the payer has the duty to refund the DT to the recipient (see below).

Recipients who qualify for an exemption can submit their declarations up to three years after the payment of the dividend.

23 How do refunds work?

Where the recipient is late in submitting the appropriate declaration (exemption or reduced-rate), the payer —i.e. entity that originally paid the dividend and deducted the DT— has the duty to refund the recipient (see also above).

However, the refund is not made from the payer’s own funds, but instead is obtained indirectly from SARS. Specifically, the refund is delayed until the payer’s next dividend payment (and DT collection). So the payer settles the refunds out of the DT amounts that are due to SARS —and this offset will be reflected on the DT return. If insufficient DT is collected to complete the refund, the excess is delayed until the next dividend payment (and so forth).

Where the payer is a declaring company (not a RI) the refund must be completed within 1 year of the recipient’s declaration submission. If, within 1 year, the company has not yet completed the refund — because insufficient additional DT is collected— the company must recover the excess directly from SARS. (This 1-year rule does not apply where the payer is a RI.)

24 What are STC credits?

STC credits refer to net dividends that were received by companies in their final dividend cycles that ended on 31 March 2012. (See Q6 above).

If a company actually declared a dividend on 31 March 2012, then a STC credit balance will only arise if the dividends accrued or deemed to have accrued in that dividend cycle exceeded the amount of the dividend declared. In all other cases, the total of the dividends accrued or deemed to have accrued from the end of the previous cycle until 31 March 2012, represents the opening balance of STC credits on 1 April 2012.

25 What are the implications of STC credits?

STC credits have different implications for different participants in the dividend chain.

- For taxable shareholders (like individuals, non-residents, and trusts), STC credits can reduce the actual DT liability.
- For certain exempt shareholders (like pension funds) the STC credits have no implications and are simply lost.
- Against that, SA-resident companies (generally) should be seen as conduits through which STC credits flow—but the STC credits (usually) have no actual value to the SA-resident company itself. Thus the STC credit balance of a SA-resident company increases as it receives STC credits from another SA-resident company, and decreases when a SA-resident company declares a dividend.

26 How does the flow and utilisation of STC credits work?

All SA-resident companies are expected to maintain a record of their STC credit balances.

All STC credits not used up by 31 March 2015 (i.e. 3 years from the effective date) will simply be lost.

When the company declares a dividend, not only does it record the reduction of its own STC credit balance, but it is also responsible for informing the recipient of how that STC credit is applied in relation to that recipient. Note that:

- STC credits are reduced automatically when a company declares a dividend.
- STC credits are apportioned pro rata to each recipient in proportion to their interests in the dividend paid.
- If the recipient is taxable (e.g. a natural person), the declaring company or RI must reduce the taxable value of the dividend by the amount of the STC credit apportioned to the dividend, and calculate DT on the balance of the dividend that is on-paid to that recipient.
- The declaring company must notify the recipient “*in writing*” of the amount of STC credits that have been apportioned to the dividend. This written notification is used by the recipient as follows:
 - If the recipient is taxable, the notification confirms which portion of the dividend received was *not* subject to DT.
 - If the recipient is another SA-resident company, the notification is evidence of how much can be added to that recipient’s own STC credit balance.
 - For other exempt recipients (e.g. pension funds) the notification will have no real value since the STC credits themselves have no value, i.e. the STC credits simply terminate.

All STC credits not used up by 31 March 2015 (three years from the effective date) will be lost.

27 What other issues do I need to seek advice on?

There are several additional issues that may be relevant to companies, RIs, dividend recipients and beneficial owners. The following list is *not* exhaustive:

- Exactly what is the extent of shareholder information that a declaring company / RI is expected to gather and provide to SARS?
- What are the “deemed dividend” rules?
- What are the separate rules for dividends *in specie*?
- What are the special rules for insurance companies?
- What is the treatment of foreign taxes suffered on foreign dividends from dual-listed foreign companies?
- What compliance matters are subject to potential penalties and/or personal liability?
- What additional returns and records must be filed with SARS (e.g. periodic reconciliations, reduce rate claims from foreign shareholders, etc.)?

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