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Tax update

STC credits: Planning required to ensure it does not go to waste

When dividends tax was introduced with effect from 1 April 2012 many companies still possessed STC credits. These STC credits arose from the fact that more dividends were received by or accrued to the company in the last dividend cycle than dividends declared during such a dividend cycle. The balance of STC credits as at 31 March 2012 are carried forward into the dividends tax system in terms of section 64J of the Income Tax Act (hereafter the Act).

A brief overview of section 64J and its practical application

The principle established by section 64J(1) is that a dividend paid by a company is not subject to dividends tax to the extent that the dividend does not exceed the STC credits of the company. This exemption however only applies if the company notifies the person to whom the dividend is paid that it has been paid from STC credits. The Act does not require that this notification must be in any specific form. Binding Class Ruling 039 (hereafter BCR039), which was issued on 24 April 2013, states that in the case of the applicant (a listed company) communication via SENS, the company's website and full publication of details in the company's financial statements published in the national financial press is sufficient notification to the shareholders to ensure that the dividend is exempt from dividends tax.

It is important to note that this notification is required for any dividends paid, even dividends paid to other resident companies that would in any case have been exempt from dividends tax in terms of section 64F(a). The reason for this lies in the following formula to calculate the balance of a company's STC credits contained in section 64J(2):

STC credits at 31/3/2012

- Any dividend declared or paid by the company after 1/4/2012

+ Dividends accrued after 1/4/2012 that was paid from other company's STC credits

In this formula, the STC credit is automatically reduced by a dividend declared or paid, irrespective of whether a notification has been given to the shareholder or not. Unless the shareholder company however receives a notification as contemplated in section 64J(2)*(b)* its STC credit balance will not be increased. In a case where no notification has been given, the STC credit will be lost without any person enjoying the exemption. Section 64J(2)*(b)*(ii) requires that the notification must be received by the shareholder company by no later than the date that it receives the dividend paid. Retrospective notification is therefore not possible.

Planning required

The balance of a company's STC credits will be deemed to be nil on 1 April 2015. It is of critical importance to ensure that STC credits are used as far as possible before this date to exempt dividends to persons who would otherwise have been subject to dividends tax. This means that the STC credits must have been rolled up through all layers of companies in a holding structure as discussed above to be available to exempt dividends paid to the non-exempt shareholders (normally natural persons or trusts).

Any company that holds shares of another company from which it could have received dividends prior to 1 April 2012 should consider its STC credit position. This is likely to include ultimate holding companies of a larger group of companies with subsidiaries as well as intermediate holding companies forming part of such a group.[1] Investment holding companies may be in a similar position. Lastly, a number of companies established in empowerment transactions to hold shares of other companies possess substantial STC credits.

It is submitted that if entities that have STC credits are in a position to pay dividends (which may not always be the case in light of significant restrictions during lock-in periods for empowerment companies or in terms of section 46 of the Companies Act) some planning may be required to ensure these STC credits do not go to waste.

[1] It should however be noted that dividends received from a group company that were exempt from STC in terms of section 64B(5)*(f)* would not be included in the STC credit.

If you require technical tax or IFRS assistance or an inhouse seminar please feel free to contact Pieter van der Zwan at **083 417 5904** or **pieter@pvdz.co.za** or to visit **www.pvdz.co.za** and submit a request on the relevant page.