momentum

investments

February 2012

Dividends Withholding Tax: **Frequently asked questions**

1. What is a dividend?

A dividend is the portion of a company's earnings that is paid out to shareholders in the form of cash or other assets (referred to as an 'in specie dividend'). A company is under no obligation to pay a dividend.

2. What is Dividends WithholdingTax (DWT)?

DWT is a tax on dividends received by a shareholder and is a 'withholding' tax. This means that the entity paying the dividend must subtract the tax from the dividend and withhold the tax before paying the net dividend to the shareholder.

3. When do I receive dividends?

As an investor in our unit trusts, you are indirectly invested in the companies in which we hold shares. When a company pays out a dividend to us, we use it to cover the expenses of running the unit trust and pay the remaining balance to you either in the form of additional units or as a cash payout where applicable.

4. How are dividends currently taxed?

Companies listed on the Johannesburg Stock Exchange (JSE) are required to pay tax on dividends in the form of Secondary Tax on Companies (STC) at a rate of 15%.

5. How will dividends be taxed from 01 April 2012?

Once DWT comes into effect, STC will be phased out and replaced with DWT. This will result in the legal liability for tax on dividend distributions shifting from the company paying the dividend to the investor who owns the units in the unit trust fund.

6. What is the key difference between DWT and STC?

DWT is a tax imposed on investors (at a rate of 15%) on receipt of dividends, whereas STC is a tax imposed on companies (at a rate of 15%) on the declaration of dividends. We are required to deduct this tax from your dividends and pay the South African Revenue Services (SARS) on your behalf.

7. When must DWT be paid?

DWT must be paid to SARS by the end of the month following the month of the declaration date (also the payable date) of the dividend by the Collective investment Scheme. This means that, if you receive a dividend on 15 April 2012, the entity withholding the tax must pay the tax to SARS by no later than 31 May 2012.

8. Why is this new tax being introduced?

DWT will be replacing STC. Companies will still be liable to pay STC on dividends declared to shareholders until 31 March 2012. This will bring South Africa in line with the international tax of regimes of other countries that also implement DWT in order to encourage investment into our country.

STC created the impression that South Africa's corporate tax rate was higher than that of other foreign countries, making us a less attractive destination for investment. Replacing STC with DWT aligns us with international standards where the recipient of the dividend is liable for the tax relating to the dividend and not the company declaring the dividend and non-resident investor may potentially be eligible for relief from double tax on his dividends in terms of the Double Taxation Agreement if the dividend was also subject to tax in the foreign country.

9. What factors will determine the DWT rate at which I will be taxed?

The rate at which we will deduct DWT depends on:

- whether your investment is held in the name of a natural person or legal entity, and
- your country of residence for tax purposes.

10. Who must pay dividends tax?

Certain shareholders are exempt from DWT. Essentially, natural persons (individuals) who are resident in South Africa, certain trusts and any foreign entity or foreign individuals are liable for DWT. The company or a regulated intermediary (or "withholding agent") entity, such as a unit trust paying the dividend to the shareholder, is responsible for paying the tax to SARS.

According to the new legislation, individuals (natural persons), certain trusts and foreign investors who are not tax resident in South Africa are liable for DWT. If the trust is a vesting trust and the beneficiaries have a right to the income from shares held by the trust, the beneficiaries and not the trust should be taxed. In this instance the beneficiaries of the trust should provide the trust with a declaration of exemption if they are not taxable persons in terms of the DWT rules.

Foreign investors may be eligible for reduced rates of DWT due to Double Tax Agreements (DTA) between South Africa and their country of residence. All other shareholders, excluding resident natural persons, are generally exempt and must follow the declaration procedure mentioned below in order to ensure that DWT is not withheld from the dividends they receive.

11. Which shareholders are exempt from DWT?

- A company resident in South Africa (for income tax purposes this includes close corporations)
- Government
- Provincial administration
- Municipalities
- Public benefit organisations approved by the Commissioner in terms of section 30 (3)
- Closure rehabilitation trusts contemplated in section 37A
- Section 10(1)(cA) entities, which includes, amongst others, scientific, technical and research industries
- Section 10(1)(d)(i) and (ii) funds, which includes, amongst others
    - Pension funds
    - Pension preservation funds
    - Provident funds
    - Provident preservation funds
    - Retirement annuity funds
    - Benefit funds, such as a medical aid funds
- Section 10(1)(t) envisaged persons, which includes, amongst others
    - Council of Scientific and Industrial Research
    - South African Inventions Development Corporation
    - South African National Roads Agency
    - Armaments Development and Production Corporation of South Africa
    - Traditional Leadership and Government Framework
    - Regional electricity distributor
    - Water services provider
    - Development Bank of Southern Africa

12. How do I prove I am exempt from DWT?

All exempt shareholders must complete and submit the prescribed declaration form as soon as possible.

The form may be found on the following websites:

- SARS
- Your collective investment scheme (unit trust)
- Your linked investment service provider (LISP)
- Linked Market Services or Computershare

Failure to complete the declaration form before dividends are paid to you will result in DWT being withheld at a rate of 15%.

13. Do foreign investors complete declaration forms?

If foreign investors are entitled to a reduced rate of DWT, they should complete and submit the prescribed declaration form as soon as possible. Failure to complete the declaration form before dividends are paid will result in DWT being withheld at a rate of 15%. This rate may be reduced by DTAs between South Africa and your country of residence.

Should the foreign investor not be entitled to a reduced DWT rate, no declaration form is required and the standard 15% rate will apply.

14. Who pays dividends to shareholders?

The company declaring the dividend, or a regulated intermediary (an authorised intermediate entity), pays dividends to shareholders.

15. Are refunds of DWT overpaid possible?

If DWT has been withheld from the dividend paid to you and you believe that the tax should not have been withheld, you must submit the declaration form as soon as possible. If this declaration form is submitted ***after*** you received your dividend, it may take some time to receive your refund. You have ***three*** years from payment date to submit a late declaration form.

If you submitted the declaration form by the date required and DWT was still withheld, it is advised that you lodge a claim against the entity that withheld the tax.

Refunds ***cannot*** be claimed directly from SARS.

16. How long is the refund process?

If the payer is a company and the dividend was paid directly to a shareholder and not via a Regulated Intermediary (or "withholding agent"), the company may either fund the refund out of future dividends declared by it or facilitate a refund from SARS. The company has one year in which to refund shareholders.

If the payer is a regulated intermediary, the regulated intermediary may fund the refund out of future dividends paid to shareholders. The regulated intermediary may not claim a refund from SARS. Although refunds should be made to shareholders as soon as possible, the legislation does not stipulate a time period within which a regulated intermediary must make a refund, provided that the person claiming the refund makes their claim within a period of three years after the date of payment of the dividend.

17. Who are regulated intermediaries?

A *regulated intermediary* is defined as:

- A Central Securities Depository Participant (CSDP) of South Africa. Examples of CSDPs are custodians such as banks.
- An authorised user authorised by an exchange (JSE) in terms of the exchange rules to perform such security services as the exchange rules may permit. An example of an authorised user would be a broker.

- An approved nominee – a person acting as the registered holder of securities or interest in securities on behalf of that other person.
- A portfolio of collective investment schemes in securities.
- Corporate transfer secretaries (excluding natural persons) approved by SARS. An example of a transfer secretary is Linked Market Services (previously Computershare).

The JSE and FSB maintain a list of regulated intermediaries. Should you wish to confirm whether the intermediary in relation to the dividend has been authorised, please contact the JSE or the FSB.

18. What is an STC credit?

An STC credit is essentially a dividend received by a company which has already been subject to STC, the tax predecessor of DWT, leviable on companies, not individuals. Under the current STC regime, these STC credits are set off against the dividends declared by the company and STC is only paid on the net amount of the dividend declared if the dividend declaration exceeds the dividends received. As DWT is replacing STC, some companies will still have tax credits for STC on hand when declaring dividends after 1 April 2012. In order not to incur double tax on shareholders, these STC credits must be used to reduce the shareholder's DWT liability.
Not all companies will have STC credits.

STC credits are available for use until 31 March 2017, after which they will fall away.

19. How much is withheld from my dividend?

15% of your dividend will be subject to DWT, except where there may be associated STC credits which could potentially reduce your liabiltiy15%.

However, certain shareholders are exempt from the dividends tax or may be subject to dividends tax at a reduced rate. Furthermore, should a foreign company which is dual listed, i.e. listed on both the JSE and a foreign stock exchange, declare a dividend, foreign withholding tax could be incurred on the dividend. Should such foreign tax be incurred and is not claimable from the foreign tax authority, this foreign tax will be allowed as a rebate (deduction) against any local DWT due to SARS.

20. How will I know that the dividend tax has been paid to SARS on my behalf?

The company paying the dividend will supply you with a tax certificate that will disclose your total dividend, less DWT paid to SARS. The same information will be sent to SARS.

21. How will individual investors be taxed?

South African residents

Individuals who are residents in South Africa for tax purposes will have their dividends taxed at a rate of 15%. If you are uncertain about whether or not you are a South African resident for tax purposes, please contact SARS on 0800 00 7277.

Non-South African residents

We will be required to deduct DWT at the default rate of 15% if:

- *No DTA exists between South Africa and your country of residence*
  South Africa has agreements in place with various foreign countries to prevent the double taxation of foreign taxpayers by South African sources – this is referred to as a DTA.

or

- *If you do not meet the requirements as set out in the relevant DTA*
  If you are a non-resident, the rate at which we will deduct DWT will be determined by the DTA that exists between South Africa and your country of residence (where applicable). However, most DTAs only allow for a reduced tax rate if your investment is held in the name of a registered legal entity (e.g. a company) and you own a minimum percentage of share capital (typically between 10% and 25%) in the South African company declaring the dividend. For unit trust investors, these requirements are unlikely to apply.

22. How will joint accounts, trusts and partnerships be treated in terms of DWT?
Unless we have received a declaration indicating otherwise, we will treat joint accountholders, including accounts held in the name of a partnership and trusts, as South African residents. This means that dividends will be taxed at the default rate of 15%.

23. How will DWT be deducted from my investment account?
We will deduct DWT at the applicable rate (e.g. maximum of 15%) from the value of your dividends and pay the remaining balance to you as part of your income distribution.

For example: If you are entitled to a dividend payment out of a unit trust, we will deduct the 15% of that amount as DWT and pay the remaining balance to you. The dividend payment that you receive will be exempt from any further tax. This is because DWT is regarded as a “withholding tax”, meaning that it does not influence the normal tax rules. Ten percent will therefore be the only tax deducted from your dividends.

24. Where can I get more information on DWT?
Please speak to your financial adviser. Alternatively, you can contact SARS on 080 000 7277 or visit www.sars.gov.za.