



## South African Fiscal Association

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P O Box 452  
CAPE TOWN  
8000  
Telephone: 021 794 0366  
Fax: 021 794 0367  
e-mail: [basilnewton@iafrica.com](mailto:basilnewton@iafrica.com)

2 April 2008

Newsletter 2/2008

### Dear members

Further to Newsletter 1/2008 we confirm the first seminar to be on **dividend taxes and related matters**. This seminar is strictly confined to members and their staff only.

1. The dates for the first seminar are confirmed as follows:

Cape Town - 22 April 2008  
Johannesburg - 17 April 2008

2. Topics

As stated in the first newsletter dividends have been very much in the lime-light during 2007 and 2008. Firstly, there were substantial amendments to the "dividend" definition in the Income Tax Act, as well as related changes to STC. Secondly, the replacement of STC with a dividend withholding tax regime.

We have assembled an excellent panel of speakers who will discuss the following:

#### **Advocate Joe van Dorsten:**

"Comparison of the meaning of "dividend" for tax and company law purposes - then, and now". Most of our members will be familiar with JL van Dorsten's book on "The law of dividends in South Africa". As a leading authority in the subject we are looking forward to his presentation.

#### **Thabo Legwaila:**

Based on the Minister of Finance's Budget Speech in February 2008, issues to be canvassed include the likely effective date of the change from STC to the dividend withholding tax, including the phasing out of STC credits. How the new dividend withholding tax is likely to apply and the meaning of a "closely held company", which is a new term that will play a key role in the new withholding tax regime (and which will also be taxed at 40%, as opposed to the normal corporate rate of 28%)?

How a company is to determine that the tax should be withheld (in other words, it is paid to a closely held company, individual or trust), bearing in mind that many shares in South Africa are held by nominees and (vesting) trusts? How section 64C and the restructuring rules in sections 41 to 47 will be affected by the new tax? What progress has been made with the renegotiation of treaties? In a case where South Africa insists on a 5% withholding tax, would the treaty partner similarly insist on 5% on dividends paid from that country or would they be willing to accept the existing zero% (e.g. the Netherlands)? Will the withholding tax apply to foreign dividends received?

**Professor Geoff Everingham and Henning Opperman:**

Whereas adv Van Dorsten will examine the meaning of "dividend" for tax and company law purposes, these two speakers will look at the relationship between the tax and accounting meaning. The courts have often held that the tax treatment of a transaction is not dependent on how the matter is recorded by an accountant. It appears that this rule no longer applies as far as dividends are concerned, following recent amendments to the "dividend" definition and related amendments to the Income Tax Act, [ Paragraph (g) of the definition of "dividend" in section 1, subparagraph (i) of section 64B(5)(f) and section 64C(4)(k) of the Income Tax Act].

In short, where a distribution is made by a company to a shareholder and the shareholder reduces his cost of investment, as opposed to recording it in the income statement, the distribution is not a dividend. The circumstances under which there is a reduction in cost will be examined by means of case studies.

**Dates, venues and booking details:**

**Date:** 17 April 2008  
**Place:** Johannesburg  
 KPMG Auditorium, 85 Empire Road, Parktown  
**Time:** 18h00 to 19h30  
**Topic:** Dividend taxes and related matters  
**Speakers:** Adv Joe van Dorsten - Cape Bar  
 Thabo Legwaila - Director: Business Tax, Legal Tax Design  
 National Treasury  
 Henning Opperman - KPMG  
**Bookings:** [Tania.Bezuidenhout@kpmg.co.za](mailto:Tania.Bezuidenhout@kpmg.co.za) Tel no: 011 - 647 5700

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**Date:** 22 April 2008  
**Place:** Cape Town  
 PricewaterhouseCoopers, No 1 Waterhouse Place  
 Century City  
**Time:** 18h00 to 19h30  
**Topic:** Dividend taxes and related matters  
**Speakers:** Adv Joe van Dorsten - Cape Bar  
 Thabo Legwaila - Director: Business Tax, Legal Tax Design  
 National Treasury  
 Prof Geoffrey Everingham - UCT  
**Bookings:** [jolandie.james@za.pwc.com](mailto:jolandie.james@za.pwc.com) Tel no: 021- 529 2368

Regards

**Charl du Toit**  
**President: SAFA**