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Ratification of protocol by Kuwait

Unless a specific exemption applies, South Africa imposes dividends tax at a statutory rate of 20% on all dividends paid by South African companies (and on certain dividends paid by foreign companies that are listed on a South African exchange).

The rate at which dividends tax is levied may, however, be reduced by virtue of the application of a double taxation agreement (**DTA**), provided that prescribed administrative requirements are adhered to. For example, the existing DTA between South Africa and Kuwait effectively grants an exemption from dividends tax for Kuwaiti shareholders who beneficially own dividends declared by South African companies. This exemption, as confirmed by the Dutch Hoge Raad and the Cape Town Tax Court, extends to eligible Swedish and Dutch shareholders through the so-called “most favoured nation” (**MFN**) clauses in South Africa’s DTAs with the Netherlands and Sweden, respectively.

However, this exemption in the Kuwait DTA (and therefore in the Dutch and Swedish DTAs) will be removed when the pending protocol which amends the Kuwait DTA (**the SA/Kuwait Protocol**), comes into effect. It is expected that the amended Kuwait DTA will limit the rate at which South Africa may impose dividends tax on Kuwaiti shareholders who beneficially own dividends declared by South African companies to:

- 5% if the beneficial owner is a company which holds at least 10% of the capital of the company paying the dividends; and
- 10% on all other cases.

This will also amend the rates at which Dutch and Swedish shareholders will be subject to dividends tax in future.

The SA/Kuwait Protocol was signed by the governments of South Africa and Kuwait, respectively, on 17 December 2019 and 1 April 2021. However, signature alone is not sufficient for a protocol to come into effect – it is required that the respective governments also ratify the protocol. On **18 September 2024**, Kuwait ratified the SA/Kuwait Protocol. However, the SA/Kuwait Protocol will only come into force once it has been ratified by the South African parliament and duly published in the Government Gazette, and the relevant documents (instruments of ratification) are exchanged between the Kuwaiti and South African governments. It is anticipated that these procedures will be concluded swiftly, as the relevant amendment has been pursued by National Treasury for several years, in line with its policy to renegotiate tax treaties that removes South Africa’s right to impose dividends tax.

Further, the SA/Kuwait Protocol stipulates that "*the provisions of the Protocol shall thereupon have effect beginning on the date on which a system of taxation at shareholder level of dividends declared enters into force in South Africa.*" This leaves open the question as to whether the amendment will apply retrospectively as from the date that dividends tax was introduced into the South African Income Tax Act (i.e. as of 1 April 2012) or prospectively from the date that the SA/Kuwait Protocol comes into force in South Africa.

Given the impact of this amendment on Kuwaiti, Dutch and Swedish shareholders in South African companies, we caution that further developments in this regard should be closely monitored.

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