AN EVALUATION OF THE PREPARATIONS MADE FOR THE SUCCESSFUL IMPLEMENTATION OF DIVIDENDS TAX.

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For my family and friends who believed in me.

ABSTRACT
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Preparing for the implementation of any new tax is a mammoth task. This mammoth task was evident when the National Treasury, SARS, companies, professional bodies, industry bodies and advisory organisations alike were preparing for the introduction of the new dividend tax in South Africa. The preparations included extensive consultations, sharing of information and providing guidance in newsletters, journals, guidance notes, websites, blogs, magazines, news papers and the like. Companies, Regulated Intermediaries and shareholders do not only have to be informed *of* the legislative changes, they need to be informed about the *when*, *what* and *how* of the impact of the tax and about the preparation needed for the implementation of dividends tax. Several common themes were identified that are critical to the successful implementation of dividends tax. These themes include communication between the business community and the regulators, as well as communication within the organisations. Involvement in and by the industry bodies has also been identified as critical to the successful implementation of dividends tax, while the timely preparation and communication of the regulatory reporting requirements is essential to the process. Within organisations, centralised oversight enables the coordinated preparation and implementation of the new tax.

KEY WORDS:

Dividends tax

Success factors

New taxes

OPSOMMING
‘N EVALUASIE VAN DIE VOORBEREIDINGS WAT GETREF IS VIR DIE SUKSESVOLLE IMPLEMENTASIE VAN DIVIDEND BELASTING.

deur

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Die voorbereidings vir die implementasie van enige nuwe belasting is ‘n reuse taak. Die omvang van hierdie taak het duidelik geword toe die Nasionale Tesourie, die Suid Afrikaanse Inkomstediens, maatskappye, professionele liggame, industrie-organisasies, ensomeer voorbereidings moes tref vir die implementasie van dividend belasting. Die voorbereidings het konsultasie met lede, die deel van inligting en die voorsiening van leiding in nuusbriewe, joernale, webtuistes, tydskrifte en koerante ingesluit. Maatskappye, gereguleerde tussengangers en aandeelhouers moes nie net ingelig word *oor* die veranderinge in die wetgewing nie, hulle moet ook ingelig word aangaande die *wanneer, wat en hoe* van die impak van die belasting en die voorbereidings vir die implementasie van dividend belasting. Verskeie gemeenskaplike temas wat krities is tot die suksesvolle implementering van dividend belasting is geidentifiseer. Hierdie faktore sluit in kommunikasie tussen die organisasies, die besigheids samelewing en die reguleerders, asook interne kommunikasie binne die organisasies. Betrokkenheid in en by die industrie-organisasies is ook geidentifiseer as krities tot die suksesvolle implementering van dividend belasting, terwyl die tydige voorbereiding en kommunikasie deur die reguleerders en die kommunikasie van die rapporterings vereistes van die reguleerders essensieel is tot die proses. Sentrale interne oorsig binne organisasies maak die gekoordineerde voorbereidings vir die implementasie van dividend belasting moontlik.

SLEUTELWOORDE:

Dividend belasting

Sukses faktore

Nuwe belasting tipes

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

It all started with two simple paragraphs in the 2007 budget speech by the Minister of Finance at the time. There was a problem and the solution was straightforward: "*Most countries have a dividend tax … We have a secondary tax on companies … we are proposing that (secondary tax on companies) be phased out and replaced with a dividend tax at shareholder level"* (Manuel, 2007).

West and Cramer (2008:10) warned that "*initial teething problems*" can be expected whenever a new tax is introduced or an existing tax is amended, and that new or amended tax must also be integrated with other sections in the Income Tax Act (58/1962) (hereafter referred to as the Act). It is also important for taxpayers to gain an understanding of the new legislation and to obtain advice in order to ensure that they comply with all the requirements of the new legislation (Edward Nathan Sonnenbergs: 2010). PricewaterhouseCoopers (2011) warned that companies will need to take action early to ensure a happy shareholders corps.

The new dividends tax legislation imposes a significant administrative burden on companies and regulated intermediaries, while shareholders will have to be educated on the mechanisms of dividends tax and on their obligations. Professional bodies, such as the South African Institute of Chartered Accountants (SAICA) and industry bodies such as the Banking Association of South Africa (BASA) have to consult with their members and answer the calls for public comment from the South African Revenue Service (SARS) and the South African National Treasury Department (National Treasury).

Audit, accounting and professional advisory firms also have to keep their clients informed of the impact of the new dividend tax.

National Treasury is responsible for drafting, refining and ensuring the technical soundness of the dividends tax legislation and SARS, as the administrator of dividends tax, needs to prepare for the manner in which information and dividends tax returns will be submitted, as well as the business requirement specification (BRS) and the submission channels.

1.2 PROBLEM STATEMENT

Preparing for the implementation of any new tax and minimising the expected *"initial teething problems*" (West & Cramer: 2008:10) is a mammoth task undertaken by National Treasury, SARS, companies, professional bodies, industry bodies and advisory organisations alike. (Hereafter companies, professional bodies, industry bodies and advisory organisations are collectively referred to as the business community). These preparations include consulting with members, sharing of information and providing guidance and in newsletters, journals, guidance notes, websites, blogs, magazines, news papers and the like.

The proof of the pudding is however in the eating, and whether or not these preparations were adequate, will only be evident when the first dividends are paid, after 1 April 2012.

An evaluation of the preparations for the new dividends tax may also identify critical success factors that contribute to the successful implementation of any new tax.

1.3 PURPOSE STATEMENT

Companies, Regulated Intermediaries and shareholders do not only have to be informed *of* the legislative changes, they need to be informed about the *when*, *what* and *how* of the impact of the tax and about the preparation needed for the implementation of dividends tax.

The purpose of the current study is to evaluate the preparations for the implementation of the new dividends tax on 1 April 2012 and to identify potential success factors that are critical to the successful implementation of any new tax.

1.4 RESEARCH OBJECTIVES

The following specific objectives guided this study:

- To evaluate the preparations made by National Treasury, SARS and the South African business community prior to the implementation of dividends tax on 1 April 2012.
- To identify potential success factors that are critical to the successful implementation of any new tax.

1.5 IMPORTANCE AND BENEFITS OF PROPOSED STUDY

This study should contribute greatly to an understanding of whether National Treasury, SARS and the South African business community were adequately prepared for the successful implementation of the new dividends tax on 1 April 2012.

From a practical perspective, the findings should assist in identifying success factors that are critical to the implementation of any new tax.

1.6 DELIMITATIONS AND ASSUMPTIONS

1.6.1 Delimitations

The study had several delimitations related to the context, constructs and theoretical perspectives of the study.

Firstly, the study was limited to a South African perspective. As such, the study only considered the manner in which other countries collect and administer tax on dividends, in passing.

Secondly, legislation used in this study included amendments to the Income Tax Act included by the Taxation Laws Amendment Act 2011 (24/2011). Proposed amendments announced in the 2012 budget speech and published in the Draft Taxation Laws Amendment Bill of 2012 was also considered, where applicable.

Finally, the study focused on whether National Treasury, SARS and the South African business community were adequately prepared for the implementation of dividends tax. This implies a focus on the administrative, consultative and communication functions of these entities as opposed to an interpretation of any particular provision in the act. Therefore, specific interpretations of the provisions, to the extent that specific preparations are not required based on the interpretation of the act, was not examined.

1.6.2 Assumptions

Assumptions represent the knowledge that the researcher assumes to be true (Leedy & Ormrod, 2010: 5). This study made several assumptions about the various role players involved in the dividends tax process:

- Role players understand what is expected of them in terms of the interpretation of the Act.
- Role players have the ultimate ability to meet the requirements of the Act and the BRS of SARS.
- Role players are all engaging in some activities in preparing for the introduction of dividends tax.

1.7 DEFINITION OF KEY TERMS

This study involves a number of key concepts. The manner in which these key terms are defined for the purpose of this study is considered below.

Beneficial owner: means the person entitled to the benefit of the dividend (also see sections 2.3.4 and 4.2.3) attached to a share (Section 64EA of the Act).

Contributed tax capital: is the sum of the stated capital or share capital and share premium (also see sections 2.3.4 and 4.2.1) of the company immediately before 1 January 2011, reduced by capital distributions to shareholders on or after 1 January 2011 (Section 1 of the Act).

Dividend cycle: the period commencing immediately after the previous dividend cycle of the company and ending on the date on which the dividend accrues to the shareholder, provided that the final dividend cycle (also see section 2.3.4) of all companies must be deemed to have ended on 31 March 2012 (Section 64D of the Act).

Dividend: means any amount transferred or applied in respect of any share, but does not include any reduction of contributed tax capital of the company or constitutes shares in the company; or constitutes an acquisition by the company of its own securities by way of a general repurchase of securities (Section 1 of the Act).

Regulated Intermediary: means any central securities depository participant (CSDP), approved nominee, portfolio of a collective investment scheme in securities; or transfer secretary (Section 64D of the Act), (also see sections 2.3.4 and 4.2.2).

STC credit: The STC credit, (also see sections 2.3.4 and 4.2.1) is the sum of the amount by which the dividends accrued to a company during the dividend cycle exceed the dividends declared (Section 64D of the Act).

The table below lists the key abbreviations used in the content of this document.

Table 1: Abbreviations used in this document

Abbreviation	Meaning
BRS	Business Requirements Specifications
CSDP	Central Securities Depository Participant
CSF	Critical Success Factor
CTC	Contributed Tax Capital
SARS	South African Revenue Service
STC	Secondary Tax on Companies
The Act	Income Tax Act no 58 of 1962
DTLAB	Draft Taxation Laws Amendment Bill 2012

1.8 RESEARCH DESIGN

An evaluation of the preparations by National Treasury, SARS and the South African business community for dividends tax, will not result in a conclusion with a clear "yes" or "no" answer. Therefore, the most appropriate strategy to follow was a qualitative empirical research design approach. This means that the conclusion reached in this study was based on an analysis of new qualitative data, being a qualitative case study together with feedback received from questionnaires directed at specialists in the field, rather than on literature and existing data.

The researcher is employed with a prominent financial services organisation and a case study was performed on the preparations made by this organisation for the implementation of dividends tax. The situation prior to the implementation date, the preparations made for the implementation of dividends tax and the situation after the implementation date was observed.

Responses to questionnaires directed at identified survey respondents in the field within the stakeholders in the business community were also analysed.

1.9 CHAPTERS OUTLINE

This research study has six main chapters outlined as follows:

Chapter one – Introduction: This chapter provides the background to the study, the problem and purpose statements, research objectives, importance of the study, delimitations and assumptions applicable to the study, definitions of key terms and an outline of the chapters.

Chapter two – Literature review: This chapter provides the theory underlying the research and identifies the research gap in the literature.

Chapter three – Research methodology: This chapter provides the analysis of the research design and methodology to be applied in carrying out this study.

Chapter four – Definition of key concepts: This chapter will continue with theory development by providing the conceptual framework of the role players in the dividend tax value chain, as well as their roles and responsibilities in terms of the new legislation.

Chapter five – Application of the research methodology: This chapter will provide an illustration of the application of the research methods. The chapter will specifically articulate the application of the descriptive analysis on the position of the organisation that is the subject of the case study prior to the introduction of dividends tax, the steps that the organisation had to take to ensure that it was adequately prepared for the introduction of the new tax, as well as an evaluation of the adequacy of the steps taken subsequent to the effective date. The chapter will also summarise the feedback received from the survey participants who were contacted. The chapter will finally conclude with an evaluation of the preparations for the introduction of dividends tax, as well as a summary of the success factors identified from the perspectives of both the organisation that is the subject of the case study and the survey participants who were contacted.

Chapter six – Conclusion: This chapter will provide a summary of the research study, findings and the proposals for further study on the subject of the introduction of new taxes.

CHAPTER 2

LITERATURE REVIEW

2.1 INTRODUCTION

It has been said that Secondary Tax on Companies (STC) is a complex tax that is simple to administer, while dividends tax is a simple tax that is complex to administer (PricewaterhouseCoopers, 2012: 3).

In the 2007 budget speech by the Minister of Finance at the time, it was announced that STC will be phased out and replaced with dividends tax (Manuel, 2007).

The unfamiliarity with the mechanisms of secondary tax on companies that presented a hurdle to foreign investors, the adverse impact that secondary tax on companies had on the accounting income statement of South African companies and the increased cost of equity financing, necessitated this conversion to dividends tax (Manuel, 2007).

2.2 HISTORY OF STC

STC is known as a corporate level system or a dividend exclusion system (South African Revenue Service, 2010: 2). Under this system, dividends are taxed on a corporate level and are tax free in the hands of the shareholder. STC is imposed on the net amount of dividends paid, less dividends received in a "dividend cycle". Any excess of dividends received over dividends paid is known as "STC credits" and is carried forward to the next dividend cycle (South African Revenue Service, 2010: 2).

As the name suggests, STC is a secondary tax on after-tax profits, as opposed to corporate income tax, which is a primary tax on company profits (South African Revenue Service, 2010: 2).

STC was introduced by section 34(1) of Act 113 of 1993 and became effective on 17 March 1993. STC was initially introduced at a rate of 15%, coupled with a reduction in corporate tax rates from 48% to 40%, then increased in 1994 from 15% to 25% accompanied by a reduction in corporate tax rates from 40% to 35% (South African Revenue Service, 2010: 3). The rate was thereafter reduced again to 12.5% in 1996 and a further reduction was effected in 2007 to 10% as part of the first implementation phase of the conversion to dividends tax (South African Revenue Service, 2010: 3).

A balance had to be found and maintained between stimulating growth through the retention of profits and the loss of revenue from fewer dividends being distributed (South African Revenue Service, 2010: 3). STC was intended to act as an incentive to grow companies through reinvesting their profits, in order to stimulate job creation and domestic demand (South African Revenue Service, 2010: 4).

Internationally, STC is rare and only two other countries (India and Estonia) seek to tax distributed profits at a corporate level only (South African Revenue Service, 2010: 4), and one of the reasons that necessitated the change from STC to dividends tax was the unfamiliarity of the STC mechanisms to foreign investors (Manuel, 2007).

2.3 CHANGE TO DIVIDENDS TAX

2.3.1 How new taxes are introduced

National Treasury is responsible for managing South Africa's national government finances. National Treasury draws its mandate from section two of the Public Finance Management Act, based on chapter 13 of the Constitution (Gordhan, 2009).

Hassan (2012:13) explained that National Treasury calls for budget proposals and technical corrections towards the end of each year. National Treasury then considers the comments and proposals that were submitted by members of the

South African business community, and follows up by holding workshops with members of the South African business community (Hassan 2012:13).

The output of this process is the Draft Taxation Laws Amendment Bill, which will be presented to Parliament, who considers the draft legislation in order to exercise its powers to make laws (Department of Justice and Constitutional Development, 2004).

SARS is mandated by the South African Revenue Service Act (34/1997) (hereafter referred to as the SARS Act) to collect revenue in an effective and efficient manner. Revenue is defined in the SARS Act as taxes, levies, fees, duties, charges, additional tax and any other monies imposed in terms of legislation, including penalties and interest in terms of such monies. To achieve this objective, SARS must secure the efficient and effective and widest possible enforcement of national legislation (section 4(1) (a) of the SARS Act. 34/1997). Furthermore, SARS may do all that is necessary or expedient to perform its functions properly (section 5 of the SARS Act. 34/1997).

With respect to the implementation of the new dividends tax, and within the framework of its mandate as set out in the SARS Act, SARS is responsible for the collection of dividends tax. To achieve this, SARS conceptualised the channels for the collection of dividends tax and the supporting documentation that needs to be submitted in its Business Requirements Specification (BRS) for the administration of dividends tax (South African Revenue Service, 2012b: 10).

2.3.2 Problems encountered during the introduction of new taxes

According to Wilkinson and Fancher (2004:15-16), a change in tax is typically measured against the criteria of efficiency, equity and simplicity. Efficiency refers to how much tax policy influences the behaviour of taxpayers, equity is a reflection of the fairness of the tax burden and simplicity is an indication of the level of complexity and the cost of compliance (Wilkinson & Fancher, 2004:15-16).

West and Cramer (2008:10) warned that *"initial teething problems"* can be expected whenever a new tax is introduced or an existing tax is amended. New or amended tax will have to be integrated with other sections in the Income Tax Act (58/1962) (West & Cramer, 2008:10). Edward Nathan Sonnenbergs (2010) also emphasised that it is important for taxpayers to gain an understanding of the new legislation and to obtain advice in order to ensure that they comply with all the requirements of the new legislation.

2.3.3 The need for the change from STC to dividends withholding tax

During the budget speech in 2007 (Manuel, 2007), the Minister of finance at the time indicated that the following reasons necessitated the change from STC to dividends tax:

- The unfamiliarity with the mechanisms of STC presented a hurdle to foreign investors;
- STC has an adverse impact on the accounting income statement of South African companies; and
- The increased cost of equity financing.

SARS, in its introduction to dividends tax, summarises these objectives as follows: To align South Africa with the international norm and to make South Africa a more attractive investment destination. This is done by eliminating the perception of a higher corporate tax rate (corporate tax plus STC), as well as the lower accounting profits (the STC charge is a debit to the Income Statement) (South African Revenue Service, 2012b:1).

The table below provides a brief summary of the primary differences between dividends tax and STC.

Table 2: Dividends Tax vs. STC

STC	Dividends Tax
Tax Base	
Complex definition of dividends: focus on profits. Payable on top of dividends declared.	Any amount transferred or applied by a company for the benefit of a person holding shares in that company. Withholding tax.
Person liable	
Company declaring the dividend.	Beneficial owner of the dividend, with exceptions for dividends *in specie* and deemed dividends on no/low interest loans to shareholders and related parties to shareholders.

STC	Dividends Tax
Trigger date	
Declaration of dividend.	Listed company: Date of payment. Unlisted company: Earlier of date of payment or date when dividend becomes payable.
Rate	
10% of net dividends paid.	Default rate of 15% of dividend, subject to exemptions or reduced rates.
Exemptions	
Exemptions applied based on status of the company declaring the dividend.	Exemptions apply based on the status of the beneficial owner of the dividends, provided that the beneficial owner complied with the administrative requirements with respect to declarations.
Reduced rates applicable to foreign residents	
Reduced rates were not possible under STC.	Reduced rates apply if beneficial owner qualifies for a reduced rate in terms of tax treaty relief and complied with the administrative requirements with respect to declarations.
Calculation	
Based on net outflow (dividends declared, less dividends received) in a dividend cycle. If net outflow results in an STC credit, the credit is carried forward and applied in the next dividend cycle.	Based on gross outflow of dividends with no reference to any period. Transitional arrangements for the STC credits are in place for a period of three years, commencing on 1 April 2012.
Payment of liability	
Payment is made by the company liable for the STC on the last day of the month following the month in which the dividend was declared.	Payment is not made by the entity liable for the dividends tax. The tax is withheld from the dividend paid to the beneficial owner of the dividends by the company declaring the dividend or by a regulated intermediary, and is paid on the last day of the month following the month in which the dividend was declared. In the event of failure to withhold and pay the dividends tax, recovery of the dividends tax may be made from the beneficial owner of the dividend.
Returns	
Payment of STC to SARS is accompanied by a return.	A return must be submitted by each entity involved in the dividend chain.
Refunds	
Refunds on over-payment by the company would have been claimed directly from SARS.	Refunds should be claimed from, and refunded by, the company or regulated intermediary who withheld the dividends tax. Beneficial owners have a period of three years from the date of payment of the dividend to submit the required documentation and to qualify for a refund. In limited circumstances, a refund may be claimed directly from SARS.

Sources: South African Revenue Service (2012a and 2012b), the DTLAB and the Act.

2.3.4 The new dividends tax legislation

The levy of dividends tax is governed by section 64E of the Act, which states that there must be levied a tax called dividends tax at a rate of 10% (the 2012 Draft Taxation Laws Amendment Bill (DTLAB) has since amended this to 15%) of the amount of dividends paid by a company (excluding a headquarter company).

Section 64E also governs the date of payment of the dividend and the value of a dividend *in specie,* as well as the value of the deemed dividend resulting from no or low interest loans by a company in relation to a share.

Section 64EA of the Act defines the liability for dividends tax. The liability for the tax is on the beneficial owner of the dividend, to the extent that the dividend is not a dividend *in specie*. If the dividend is a dividend *in specie*, the company declaring the dividend is liable for the tax.

Section 64F of the Act lists the exemptions to dividends tax that are not dividends *in specie,* while section 64FA of the Act governs the exemptions and reductions in respect of dividends *in specie.* If the beneficial owner of the dividend is any of the entities listed in section 64F, the dividend *in specie* is exempt from dividends tax.

The exemptions however, only apply if the beneficial owner of the dividend submits a declaration in writing that the exemption is applicable, as well as a written undertaking to inform the company in the event of a change in this circumstance. The same rules apply in the event that a beneficial owner qualifies for a reduced rate in terms of a tax treaty.

With regards to the withholding of the dividends tax, Section 64G of the Act states that a company declaring and paying dividends (not dividends *in specie*), must withhold dividends tax at a rate of 10% (now 15% according to the DTLAB). No or a reduced rate of dividends tax must be withheld, if the person to whom the dividends are paid has provided a declaration in writing that the exemption or reduced rate is applicable, as well as a written undertaking to inform the company in the event of a change in circumstances. The declaration must be submitted to the company on the earlier of a date determined by the company or the date that the dividend is paid. No dividends tax must be withheld if the company and the beneficial owner form part of the same group of companies (as defined in section 41 of the Act). Section 41 defines a group of companies as: two or more companies in which one company directly or indirectly holds at least 70% of the equity shares in each controlled company.

Furthermore, no dividends tax must be withheld if the payment is made to a regulated intermediary.

Section 64H of the Act governs the withholding of dividends tax by a regulated intermediary. If a regulated intermediary pays the dividend, the regulated intermediary must withhold the dividends tax at a rate of 10% (now 15% according to the DTLAB), subject to the conditions below:

- No dividends tax must be withheld if the dividends are paid to another regulated intermediary.
- No dividends tax must be withheld or dividends tax at a reduced rate must be withheld if the beneficial owner of the dividend submitted a declaration at the date determined by the regulated intermediary (or if no date had been determined, at the date that the dividend is paid), indicating that the beneficial owner of the dividend is an exempt entity as defined in section 64F, or qualifies for a reduction in the dividends tax rate in terms of a tax treaty applicable to the beneficial owner. The declaration must also be accompanied by an undertaking by the beneficial owner to inform the regulated intermediary in the event of a change in this circumstance.

Section 64I of the Act states that if a dividend that is not a dividend *in* specie is paid to an insurer, the insurer is deemed to be a regulated intermediary. If the dividend is allocated to an individual policy holder fund, it is deemed to be paid to a natural person on the date that the dividend is paid to the insurer.

The treatment of STC credits are documented in Section 64J of the Act. A dividend paid by a company is not subject to dividends tax to the extent that it does not exceed the STC credit of the company. The company must however submit notification in writing to the person to whom the dividend is paid, of the amount by which the dividends paid reduces the STC credits of the company.

The amount by which the STC credit of a company is reduced is to be apportioned to all dividends, whether the beneficial owner of the dividend is exempt from dividends tax, qualifies for dividends tax at a reduced rate or is liable for dividends tax at the full rate of 10% (now 15% according to the 2012 DTLAB).

According to Section 64EA of the Act, the beneficial owner of the dividend bears the liability for the dividends tax. Section 64K of the Act governs the date of payment of the tax and states that if a company is liable to pay the dividend tax (in terms of section 64EA (b)), the dividends tax must be paid to SARS on the last day of the month following the month in which the dividend was paid, unless the dividends tax was paid by another person. The amount paid to SARS must be reduced by refunds due to the beneficial owner in terms of section 64L or section 64M. The necessary returns must accompany payment of the dividends tax. Any person who fails to withhold dividends tax or who withholds the tax, but fails to pay the tax to the Commissioner, remains liable for the dividends tax unless the tax has been paid by another person.

Any declarations and undertakings received by the company paying the dividend or by regulated intermediaries, from beneficial owners who qualify for a reduced rate, must be submitted to the Commissioner at the time and manner described by the Commissioner.

The Commissioner may issue an assessment to the person liable for the tax if he is of the opinion that the dividends tax has not been paid in full.

If the dividends tax is not paid to the Commissioner within the prescribed time period, interest must be paid in respect of the balance of the tax outstanding at the prescribed date.

Section 64L of the Act states with respect to refunds due in respect of dividends declared and paid by companies, that if a declaration with respect to exempt beneficial owners or beneficial owners who qualify for dividends tax at a reduced rate was not received by the date specified by the company or by the dividend payment date, and dividends tax was subsequently withheld where no or a reduced amount should have been withheld, and the beneficial owner subsequently submits such a declaration and undertakings within a period of three years after the payment of the dividend, the company must refund the amount over-deducted from the dividend, to the beneficial owner. The amount that has now become refundable, is to be withheld from dividends tax that is payable to the Commissioner within a period of one year after the declaration was received. To the extent that the amount refundable exceeds the amount of dividends tax payable to the Commissioner, the refund must be recovered by the company from the Commissioner. No amount may be recovered from the Commissioner if the claim for recovery is submitted after a period of four years of payment of the dividends tax to the Commissioner.

Section 64M of the Act states with respect to refunds due in respect of dividends paid by regulated intermediaries, that if a declaration with respect to exempt beneficial owners or beneficial owners who qualify for dividends tax at a reduced rate was not received by the date specified by the regulated intermediary or by the dividend payment date, and dividends tax was subsequently withheld where no or a reduced amount should have been withheld, and the beneficial owner subsequently submits such a declaration within a period of three years after the payment of the dividend, the amount becomes refundable to the beneficial owner. The amount refundable must be refunded by the regulated intermediary from any amount of dividends tax withheld by the regulated intermediary after receipt of the declaration.

2.4 GETTING READY FOR DIVIDENDS TAX

Since the announcement by the Minister of Finance in 2007, much has been written about the new tax, expected difficulties and challenges and what needs to be done to prepare for the successful implementation of dividends tax.

2.4.1 Administrative burden

It is widely recognised by all stakeholders that the new dividends tax will be accompanied by a huge administrative burden for companies and regulated intermediaries alike.

Conceptually, there is nothing complicated about the new form of tax (PricewaterhouseCoopers, 2011). The introduction of the new tax will however create a huge administrative burden, which many companies appear to be unaware of or have not yet started any preparatory work (PricewaterhouseCoopers, 2011). A comprehensive process of information gathering is therefore needed (PricewaterhouseCoopers, 2011), while the supporting data that will be required to be included in the dividends tax return is onerous (Passmore, 2012).

Gangat (2012) also warns that dividends tax may have consequences for both the shareholder and the company declaring the dividends that neither party may be aware of, while Passmore (2012) agrees that dividends tax will result in a set of complex administrative rules increasing the already heavy compliance burden on the taxpayer.

According to Du Toit (2012), companies can expect to face an administrative burden. Both the arguments by Du Toit (2012) and Passmore (2012) above are confirmed by Hassan (2012b), when he says that the onus on the beneficial owners of the dividends to inform companies and regulated intermediaries that they are exempt from dividends tax, or that they qualify for a reduced rate, will create an additional administrative burden on beneficial owners, companies and regulated intermediaries. The above processes which must be followed by the beneficial owners of the dividends, companies and regulated intermediaries could be a heavy administrative burden.

Payments to shareholders that represent a return of CTC will be deemed a dividend, if the administrative requirements of specifically determining that the payment is a return of CTC, has not been met (Brincker, 2012).

A Dividends Tax return (DTR02) is required to be submitted to SARS by each entity in the dividends value chain. The return summarises the management (receipt / declaration of dividends and the distribution of the dividends received / declared) of dividends and is required to be accompanied by supporting data.

SARS, in recognising the administrative burden imposed on all parties in the dividends tax value chain, has agreed to a phased approach with respect to the implementation of the dividends tax return requirements.

2.4.2 Specific industries and situations

Various authors have focussed on the impact of dividends tax on specific industries and unique situations.

The effect of dividends tax will ripple through the investment industry, impacting the holders of ordinary and preferential shares, investors in exchange traded funds and investors in retirement annuities and other long term savings policies, which are exempt from the tax (Visser, 2012).

Brincker (2012b) goes as far as to warn that an administrative nightmare may ensue if the dividend definition is not amended to exclude the purchase price paid for an odd-lot offer, while Edward Nathan Sonnenbergs (2010b) focuses on the significant administrative burden on long-term insurance companies to the extent that dividends are received in respect of policies held by individuals.

According to Lippstreu (2012) there may be a huge administrative overhead for hedge funds, should the fund managers have to split the fund into taxed and untaxed classes. Fund managers will have to weigh the cost of achieving tax efficiency against the quantum of the tax saving (Lippstreu 2012).

Louw (2012b) discussed the flow-through principle pertaining to trusts and addresses the question as to who the beneficial owner of the dividend is. Is it the beneficiary, the trustee, or the trust? Vayanos (2012) addresses the issue that exemption from dividends tax will not be automatic for non-profit organisations and that these organisations need to take the required steps to notify the company or regulated intermediary of their exempt status.

Another issue that requires attention in this argument of new dividend tax and the administration burden is loans to shareholders, or their connected persons, on which STC has been paid (Louw, 2012). Where a company has made such a loan to a shareholder or connected person in relation to a shareholder, and the amount is repaid after the effective date, there is no mechanism whereby the STC paid by the company can be recovered and no set-off can take place (Louw, 2012).

2.4.3 Business decisions

The transitional arrangements with respect to STC credits, as well as the difference in the rate charged for STC (10%) and the rate charged for dividends tax (15%), has left companies with important strategic business decisions to make.

From a commercial perspective, business decisions need to be made as to whether it would be more economical to declare dividends out of retained income before the effective date and pay STC at 10%, or wait until after the effective date and pay dividends tax at 15% (Louw, 2012). Visser (2012) asks the all important question: What legitimate opportunities exist to cushion the effect of the higher dividends tax rate? The most obvious is that a company can declare a dividend before 1 April 2012 and only pay the dividend at a later stage when it has cash available (Visser, 2012).

Other companies have made the decision to announce a dividend ahead of the April deadline, based on the fact that these companies have sufficient STC credits available to shelter some or all of the dividend payment from dividends tax (Planting, 2012). This means the companies will incur the STC, allowing shareholders to avoid the dividend withholding tax for one last time and it is expected that we will see a number of special dividends in the next three years (Planting, 2012).

Investors are understandably concerned about the impact of dividends withholding tax and the real effect on their investments (Grandia, 2012). The effects of dividends tax are minimal in a well-diversified discretionary investment, but may be more marked for investors seeking to benefit from the potential for higher capital growth and associated higher dividend yields from equities (Grandia, 2012).

2.4.4 Beneficial owner

The concept of beneficial owner with respect to dividends is particularly relevant when the flow through principle with respect to trusts are considered, but also when dividends are ceded by one party to another.

Because dividends tax is new in South Africa, there is limited case law on the subject. There was however a tax court of Canada case that handed down judgement on 24 February 2012, that is an important judgement in the light of dividends tax (Brincker, 2012c).

In this judgement four elements were identified which one should consider in order to determine whether the recipient is the beneficial owner of the payments, being:

- possession;
- use;
- risk; and
- control.

If the approach of this tax court case is adopted, the fact that the recipient may in turn on -pay dividends to its own shareholders, would not in itself result in the recipient not being the beneficial owner. The ultimate question is whether the recipient is a conduit or whether the recipient assumes the risk and control of the dividends that are to be received (Brincker, 2012c).

2.5 CRITICAL SUCCESS FACTORS

2.5.1 Definition

Critical success factor (CSF) is the term for an element that is necessary for an organisation or project to achieve its mission. It is a critical factor or activity required for ensuring the success of a company or an organisation (Wikipedia, Not dated).

According to the Gantthead website (Not dated), CSFs are also described as the "do or die" aspects of a project. Examples of critical project success factors include understanding the business context, managing change and planning for timely, practical and realistic implementation.

Boylon and Zmud (1984; 17-26) (in Wikipedia, Not dated)) are also quoted to define CSFs as those few things that must go well to ensure success, which must be given special and continual attention to bring about high performance.

2.5.2 How the identification of critical success factors can assist in the future implementation of a new tax

Parker Gates (2010: 24) cites Bullen and Rockart, (1981) and states that CSFs are made explicit for the purpose of setting priorities and allocating resources. They state that CSFs add value to the planning process by exposing those variables that will most affect success or failure in pursuit of goals. CSFs describe the operational necessities of the present state. CSFs are *"a logical and necessary input into the corporate strategic planning process"* and lower level (managerial) CSFs provide useful insight into appropriate resource allocation, or operational planning. (Bullen & Rockart in Parker Gates, 2010: 24).

According to RapidBI (2007), there are seven key areas for CSFs:

- Quality data and reporting;
- Training and education;
- Management commitment, customer satisfaction;
- Staff Orientation;
- Role of the quality department;
- Communication to improve quality, and
- Continuous improvement.

The identification of success factors in each of these key areas during the preparation for and implementation of the new dividends tax may assist National Treasury, SARS and the South African business community in the successful implementation of any other new tax.

2.5.3 Success factors identified for the successful implementation of dividends tax

Several authors have listed steps that have to be taken to ensure the successful implementation of dividends tax.

Passmore (2012) emphasises the increasing importance for companies to have the right systems in place. New accounting, reporting and internal control systems may need to be adopted and companies need to consult with their information technology and accounting departments sooner, rather than later (Passmore, 2012).

Planting (2012) identifies a number of success factors such as:

- Companies need to familiarise themselves with the new dividends taxation system. The legislation contains a number of hidden administrative taxation consequences for companies, which include obtaining very specific and detailed information from shareholders and taking into account the way in which the investment industry is structured, obtaining and maintaining such information, and withholding the correct amount of tax, may prove to be an onerous task for many companies.

- There must be a clear communication line between the company, regulated intermediaries and shareholders.
- The standardisation of forms, procedures and communication lines will be important to an efficient system.

In summary, Planting (2012), emphasises that it is important that companies know the profile of their shareholders and reconsider their dividend policy.

Companies and shareholders are therefore encouraged to increase their awareness of the new regime, so as not to be caught off guard (Gangat, 2012).

PricewaterhouseCoopers (2011) lists a comprehensive process of information gathering, a clear line of communication between the company, regulated intermediary and shareholder and the standardisation of forms, procedures and communication lines as important to an efficient system.

2.6 CONCLUSION

It has been established in the literature review that since it was announced by the minister in the Budget speech of 21 February 2007 that the new dividends tax provision will be introduced in South Africa, a lot has been written about the dividends tax subject and the administrative burden that the implementation of the new dividends tax will impose on all parties in the dividends tax value chain. Various industries have raised specific concerns on how their specific industry will be impacted by the implementation of dividends tax.

The comments made are however vague and refer to the “huge” administrative burden, the “significant impact” that it will have and the “comprehensive” and “onerous” documentary requirements.

Success factors identified are equally vague and companies are encouraged to “increase their awareness” and to embark on a process of “information gathering”.

There is however a shortage of details on the *when*, *what* and *how* of the impact of the tax and about the preparation needed for the implementation of dividends tax, and it is unclear whether South Africa is adequately prepared for the introduction of dividends tax.

A significant industry that has not been adequately addressed in the literature is the financial services and banking industry.

Most of South Africa's large financial services and banking institutions fulfil more than one role in the dividends process. These institutions are listed companies that declare dividends to their own shareholders, but are also holding and investment companies that receive dividends. More importantly however, these companies also act as regulated intermediaries and it is not clear whether these institutions are adequately prepared for the administrative burden imposed by the new dividends tax legislation.

The focus of this study on the adequacy of the preparations made for the implementation of the new dividends tax therefore focused on the financial services and banking industry.

This chapter provided the theory underlying the research and identified the research gap in the literature. Chapter three will proceed to provide the analysis of the research design and methodology that was applied in carrying out this study.

CHAPTER 3

RESEARCH DESIGN AND METHODS

3.1 DESCRIPTION OF INQUIRY STRATEGY AND BROAD RESEARCH DESIGN

An evaluation of the preparations by National Treasury, SARS and the South African business community for dividends tax, will not result in a conclusion with a clear "yes" or "no" answer. Therefore, the most appropriate strategy was to follow a qualitative empirical research design approach. This means that the conclusion reached in this study was based on an analysis of new qualitative data, being a qualitative case study together with feedback received from questionnaires directed at specialists in the field, rather than on literature and existing data.

Because the preparations for dividends tax by the parties mentioned above is not only a matter of fact, but also contains a subjective component, the inquiry strategy selected is questionnaires and interviews.

The following are descriptors that best describe the broad research design of the study:

Empirical research: The study can be classified as empirical research because the researcher collected and studied primary data.
Basic research: Basic research is undertaken purely to understand processes and their outcomes (Saunders, Lewis & Thornhill, 2009: 588). Although a secondary outcome of this research may result in the identification of critical success factors that will contribute to the successful implementation of any new tax, this research aligns closer to basic research than to applied research on the basic-applied continuum.
Evaluative research: Evaluative research provides the researcher with a means through which to judge the effectiveness of particular policies, practices or innovations (Leedy & Ormrod, 2020:137). The study intended to evaluate the preparations for the introduction of dividends tax.

Cross-sectional research: Cross-sectional research refers to the study of a particular phenomenon at a particular time (Saunders *et al.*, 2009:590). Because the preparations undertaken by National Treasury, SARS and the South African business community for the implementation of dividends tax are continuing, the research captured the preparations at a particular moment in time.

Primary data: Primary data refers to data collected specifically for the research project undertaken (Saunders *et al.*, 2009: 598). In this study, the researcher collected primary data in the form of the results of a case study and the responses to the questionnaires directed at specialists in the field.

Qualitative data: Qualitative data refers to non-numerical data (Saunders *et al.,* 2009: 598). During this study, data was collected by way of a case study and questionnaires, which resulted in non-numerical data.

3.2 DATA COLLECTION

Primary data was collected by way of a case study, as well as questionnaires presented to identified survey participants. These data collection tools were selected because the research objective involves both elements of fact (where a "yes" or "no" answer will suffice) and of perception, where the respondents may want to explain their responses.

The researcher commenced with a study of the relevant sections of the Act and the BRS published by SARS. The researcher proceeded to use the results of this study to identify the actions that all identified role players had to take to ensure that they are adequately prepared for the introduction of dividends tax.

The researcher is employed with a prominent financial services organisation and performed a case study on the preparations made by this organisation for the implementation of dividends tax. The situation prior to the implementation date, the preparations made for the implementation of dividends tax and the situation after the implementation date, was observed.

Questionnaires directed at identified stakeholders in the business community were also distributed. The questions were structured to include questions requiring “yes” or “no” responses, as well as responses indicating the respondents opinion on the degree of preparedness.

To address the second research objective (“To identify potential success factors that are critical to the successful implementation of any new tax”), the researcher included open-ended questions.

A copy of the questionnaire is included in appendix A to this document.

3.3 DATA ANALYSIS

Data collected in the case study was summarised using Microsoft Word. Because the number of interview subjects was limited, the amount of time needed for analysis of the data was also limited.

The tool that was used to distribute the questionnaires to the identified survey participants and to collect and summarise the responses, was SurveyMonkey™. SurveyMonkey™ is an online tool that is used to create surveys and to send and collect responses. Once a survey has been created on SurveyMonkey™, the host sends or publishes the link to the survey. Recipients can then access the survey online, complete it as needed and submit their responses. Finally the host collects and analyses the responses.

Questions requiring a “yes” or “no” answer was aggregated per question.

Questions requiring an answer indicating a degree of preparedness were aggregated per question and the response rate from all respondents per degree of preparedness in a particular category.

The responses to the open-ended questions was summarised and analysed in the following manner:

- Responses were compressed to condense the meaning of large amounts of text into fewer words (Saunders *et al.,* 2009:491).
- Responses were then scrutinised to identify meaningful categories of responses.
- Responses were then allocated to the categories identified.
- The responses were then aggregated per category.

The observations made during the case study was analysed and compared to the responses received from the survey participants.

3.4 ASSESSING THE QUALITY AND RIGOUR OF THE PROPOSED RESEARCH DESIGN

The limitations inherent to the research tool, being a questionnaire, may be a source of bias or error, that could influence the research findings.

Respondents may interpret the questions in a manner that is inconsistent with the intentions of the researcher. To address this potential bias, the researcher subjected the questionnaire to a pre-test with the researcher's study leader.

The subject matter of this study may also be a potential source of bias. The respondents may be tempted to present a positive image of the current level of preparedness for the implementation of dividends tax. To address this, the researcher introduced the questionnaire by way of a covering letter explaining the purpose of the study, while emphasising the need to provide answers that closely represent the current status. Furthermore, the researcher ensured the anonymity of the respondents and the organisations that they represent.

The fact that the researcher is employed by the organisation that was the subject of the case study, is a potential source of bias. The researcher may be reluctant to present an unfavourable view of the organisation and the organisation may also be tempted to present a positive image of the current level of preparedness for the implementation of dividends tax. To address this, the researcher guaranteed the anonymity of the organisation and in a pre-case study interview with the relevant level of senior management, explained the research objectives.

The responses to the open-ended questions in the questionnaire may not be interpreted by the researcher in the manner intended by the respondents. To address this potential bias, the guidance and input of the researcher's study leader was obtained.

3.5 RESEARCH ETHICS

The following ethical principles that may apply to this study were considered:

- Privacy of actual and potential participants (Saunders *et al.,* 2009:185).
  Because the researcher is employed by the organisation that is the subject of the case study and because the organisation is a prominent listed company, the privacy of the participant is of utmost importance and the preservation of their privacy was therefore guaranteed.
- Voluntary nature of participation and the right to withdraw from the process (Saunders *et al.,* 2009:185).
  Participation in the process was voluntary, as well as the right to withdraw from the process, was communicated to the respondents.
- Consent of participants (Saunders *et al.,* 2009:185).
  Because the intended target of the case study is a prominent listed company, the consent of senior management was obtained prior to obtaining the input of any employee.
- Confidentiality of data and anonymity of participants or identifiable participants (Saunders *et al.,* 2009:185).
  Because the intended target of the case study and the survey participants include prominent organisations as representatives from well-known industry and professional bodies, these organisations may potentially be exposed to reputational damage should the confidentiality of data and anonymity of the participants not be assured / protected. The confidentiality of data and the anonymity of participants or identifiable participants was therefore guaranteed by the researcher.

- Behaviour and objectivity of researcher (Saunders *et al.,* 2009:186).
  The researcher is employed with a prominent organisation in the financial services industry. It is therefore of utmost importance that the researcher's behaviour remain above reproach during the entire process. The researcher had to take care to remain objective. To ensure this, the researcher obtained the necessary consent from the organisation with which the researcher is employed.

Appendix B contains a copy of the informed consent form that was used in the study.

This chapter provided an analysis of the research design and methodology that was applied in carrying out this study.

The next chapter will continue with theory development by providing the conceptual framework of the role players in the dividend tax value chain, as well as their roles and responsibilities in terms of the new legislation.

CHAPTER 4

DEFINITION OF KEY CONCEPTS

4.1 INTRODUCTION

The new dividends tax legislation identifies several role players in the dividend tax process: The Company declaring and paying the dividend, the entity responsible for withholding the dividends tax and paying it to SARS, and the recipient of the dividend. Each of these role players has certain obligations with respect to dividends tax.

4.2 ROLE PLAYERS IN THE DIVIDENDS TAX VALUE CHAIN

Many of South Africa's large corporate financial services institutions may find themselves in each of these roles in various stages of its trading activities: (PricewaterhouseCoopers. 2012).

- As company declaring and paying dividends in its ordinary business cycle.
- As regulated intermediary responsible for withholding dividends tax.
- As shareholder receiving dividends from subsidiaries, associates and other investee companies.

4.2.1 Companies declaring the dividends

As a general rule, when a company makes a distribution to its shareholders, the amount can be classified for tax purposes as a "dividend" or a "return of capital". It is possible for a distribution to be partially a dividend and partially a return of capital. (PricewaterhouseCoopers, 2012:4). A return of capital represents a reduction of the CTC. This reduction is elective at the option of the company. The Act is silent on the manner that the election by the company is evidenced and companies should implement its own record-keeping measures. (PricewaterhouseCoopers, 2012:4).

Responsibilities:

- Keep record of the CTC balance in each class of shares.
- Determine and document the reduction of CTC included in each distribution after 1 April 2012.

The definition of "dividend cycle" was amended in section 64B(1) of the Act to include a proviso that all companies will have a final dividend cycle ending on 31 March 2012, during which the STC credit of the company will be calculated. Any dividend declared on or after the implementation date of 1 April 2012 will be reduced by the STC credit, which must be allocated on a pro rata basis to all beneficial owners in respect of the distribution. This reduces the STC credits of the company and the company is required to notify the beneficial owners of the amount by which the STC credits of the company were reduced.

After a period of three years after the effective date of 1 April 2012, the balance of STC credits are deemed to be R nil. At a strategic level, companies may want to fully utilise the STC credits available and pass the benefit to their shareholders, prior to the expiry of the three year period.

Responsibilities:

- Maintain record of the STC credit balance available for set off against distributions by the company.
- Calculate the apportionment of the STC credit to all the recipient shareholders.
- Communicate to the beneficial owners the amount by which the STC credits were reduced in each distribution.

Dividends *in specie* and the deemed dividends that arise on no or low interest loans to shareholders or related parties to the shareholders and which are treated as *in specie* dividends, are treated differently from distributions that are not dividends *in specie*. The difference in the treatment lies in the following aspects: the amount of the dividend is not based on an actual cash flow and with respect to assets distributed, the market value of the asset is deemed to be the amount of the dividend. With respect to no or low interest loans, the deemed amount of the dividend is the difference between interest calculated with reference to the official rate of interest defined in the 7th schedule to the Act, and the amount of interest actually paid. Because there is no cash flow with respect to the dividends *in specie* and the deemed dividend with respect to no or low interest loans, the company bears the liability for the dividends tax.

Responsibilities:

- Determine the market value of assets distributed as a dividend *in specie.*
- Calculate the deemed dividend value in respect of no or low interest loans to shareholders or related parties to the shareholders.
- Pay the dividends tax calculated on these values to SARS on or before the due dates.

If dividends are paid to beneficial owners who are exempt from dividends tax or who qualify for dividends tax at a reduced rate, no or a reduced amount of dividends tax must be withheld if the beneficial owner of the dividend submits a declaration to the company (on a date determined by the company and if no date is determined by the company, before the date of payment of the dividend) that the beneficial owner is exempt from dividends tax, or a reduced rate applies, accompanied by an undertaking that the beneficial owner will notify the company of a change in circumstances. Should such declarations and undertakings not be submitted in time, dividends tax at a rate of 15% should be withheld and paid over to SARS. Subsequent submission of these documents within a period of three years after payment of the dividend, will entitle the beneficial owner to a refund. The company must refund the beneficial owner within one year of receipt of the declarations from the dividends tax withheld on subsequent dividend declarations and to the extent that the refund due exceeds dividends tax withheld, the company must apply for recovery of the refund amount from SARS.

Responsibilities:

- Maintain record of declarations and undertakings received from beneficial owners of the dividends.
- Maintain record of refunds due on late receipt of declarations and undertakings from beneficial owners of the dividends.
- Apply for recovery of dividends tax from SARS when the refunds due exceed the amounts of dividends tax withheld within a year after the receipt of late declarations and undertakings from beneficial owners of the dividends.

If the company's dividends are paid by a regulated intermediary, the company must provide the regulated intermediary with all the necessary information pertaining to the reduction in CTC and STC credits to enable the regulated intermediary to withhold the correct amount of dividends tax. The company is also required to submit a return to SARS containing the information pertaining to the dividend flow.

Responsibilities:

- Communication of information to regulated intermediary.
- Preparation and submission of the required return to SARS on or before the end of the month following the month in which the dividend was paid.

4.2.2 Entity responsible for withholding and paying dividends tax

If dividends are paid to beneficial owners who are exempt from dividends tax or who qualify for dividends tax at a reduced rate, no or a reduced amount of dividends tax must be withheld if the beneficial owner of the dividend submits a declaration to the regulated intermediary (on a date determined by the regulated intermediary and if no date is determined by the regulated intermediary, before the date of payment of the dividend) that the beneficial owner is exempt from dividends tax, or a reduced rate applies, accompanied by an undertaking that the beneficial owner will notify the regulated intermediary of a change in circumstances.

Should such declarations and undertakings not be submitted in time, dividends tax at a rate of 15% should be withheld and paid over to SARS. Subsequent submission of these documents within a period of three years after payment of the dividend, will entitle the beneficial owner to a refund. The regulated intermediary must refund the beneficial owner out of the dividends tax withheld on subsequent dividend declarations. This may be refunds withheld from dividend tax payable on dividends declared by any clients of the regulated intermediary.

Responsibilities:

- Maintain record of declarations and undertakings received from beneficial owners of the dividends.

- Maintain record of refunds due on late receipt of declarations and undertakings from beneficial owners of the dividends.
- Prepare and maintain records and reconciliations of refunds paid out of dividends tax withheld from subsequent dividend declarations.

The regulated intermediary is also required to submit a return to SARS containing the information pertaining to the dividend flow.

Responsibilities:

- Communication of information to next regulated intermediary, if dividends are paid to another regulated intermediary.
- Preparation and submission of the required return to SARS on or before the end of the month following the month in which the dividend was paid.

4.2.3 Shareholders receiving dividends

If the beneficial owners of the dividend are exempt from dividends tax or qualify for dividends tax at a reduced rate, the beneficial owners of the dividends are required to submit declarations to the company or regulated intermediary (on a date determined by the company or regulated intermediary and if no date is determined by the company or regulated intermediary, before the date of payment of the dividend) that the beneficial owner is exempt from dividends tax, or a reduced rate applies, accompanied by an undertaking that the beneficial owner will notify the regulated intermediary of a change in circumstances.

Responsibilities:

- Submit a declaration to company or regulated intermediary indicating that an exemption or reduced rate applies.
- Submit an undertaking to inform the company or regulated intermediary if the beneficial owner is no longer the beneficial owner or if the exemption no longer applies.

If the shareholder is not the beneficial owner of the shares, the declarations and undertakings must be collected by the shareholder from the beneficial owner, and submitted to the company or regulated intermediary.

Responsibility:

- Collect and submit to the company or regulated intermediary, the declarations and undertakings mentioned above.

4.2.4 Other role players

Other role players in the dividends tax process are National Treasury, SARS, Industry bodies, Professional bodies and Professional advisory services organisations. These role players also have specific responsibilities, ensuring the successful implementation of dividends tax.

National Treasury:

The National Treasury is responsible for managing South Africa's national government finances. National Treasury draws its mandate from section two of the Public Finance Management Act, based on chapter 13 of the Constitution (Gordhan, 2009).

Responsibility:

- Researching and formulating tax policy through engagement with the business community, government and both local and international organisations.
- Preparing draft legislation for promulgation by Parliament.
- Drafting explanatory memoranda explaining the rationale of the new legislation and changes to legislation.
- Consulting with the business community and obtaining public comment for consideration in drafting the legislation.

South African Revenue Services:

The South African Revenue Services (SARS) is mandated by the SARS Act to collect revenue in an effective and efficient manner. Revenue is defined in the act as taxes, levies, fees, duties, charges, additional tax and any other monies imposed in terms of legislation, including penalties and interest in terms of such monies. To achieve this objective, SARS must secure the efficient and effective and widest possible enforcement of national legislation (section 4(1)(a) of the SARS Act. 34/1997). Furthermore, SARS may do all that is necessary or expedient to perform its functions properly (section 5 of the SARS Act. 34/1997).

With respect to the implementation of the new dividends tax, and within the framework of its mandate as set out in the SARS Act, SARS is responsible for the collection of dividends tax. To achieve this, SARS conceptualised the channels for the collection of dividends tax and the supporting documentation that needs to be submitted in its BRS for the administration of dividends tax (South African Revenue Service, 2012: 10).

Responsibility:

- Establishing the submission channels for the collection of the supporting documentation.
- Determining the Business Requirements Specification for the administration of dividends tax.
- Establishing the data requirements in respect of the declaration that the beneficial owners must submit to qualify for exemptions for or reduced rates.
- Providing guidance, education and information on dividends tax to taxpayers.

Professional bodies:

Professional bodies, for example the South African Institute of Chartered Accountants (SAICA) and the South African Institute of Professional Accountants (SAIPA) consult with their members and answers the calls for public comment on the proposed legislation. These bodies also provide guidelines, training and advice to their members in implementing the new tax.

Responsibility:

- Consulting with their members and answer calls for public comment.
- Provide guidelines, training and advice to their members.

Industry bodies:

A dividends tax working group consisting of SARS, members of the Association for Savings and Investments of South Africa (ASISA), the Banking Association of South Africa (BASA), the Johannesburg Stock Exchange (JSE), STRATE Ltd and others was established, whereby the implementation of the dividends tax was discussed and after extensive consultation, a phased implementation approach was agreed on. Industry bodies also actively participated in the process by answering the call for public comment on the proposed legislation

Responsibility:

- Consult with members and answer calls for public comment.
- Engage, consult and exert influence on the Regulator.

Professional Advisory Services Entities:

Professional advisory services entities, for example PricewaterhouseCoopers Tax Services (Pty) Ltd, BDO Southern African Co-ordination (Pty) Ltd and KPMG Services (Pty) Ltd provide consulting services, advice, guidance and training on the implementation of dividends tax to their clients and potential clients.

Responsibility:

- Provision of advisory services, guidance and training.

4.3 CONCLUSION

It is clear that in order to adhere to the requirements of the new dividends tax legislation, the various role players in dividend tax process face a significant administrative burden.

Several organisations may find themselves in various roles during different stages of their trading. In particular, companies in the financial services and banking industries

These groups usually have structures that consist of listed holding companies with listed and unlisted subsidiaries. Ownership of the holding company is usually vested in amongst others corporates, pension funds, insurance companies, unit trusts, other managed funds and private investors.

The organisations are therefore both the receivers and the payers of dividends at various levels in the group structure, and would make use of the services of CSDPs. These organisations may however also act as regulated intermediaries and transfer secretaries.

The large financial services and banking organisations were involved and had input in the pre-legislation processes facilitated by National Treasury, SARS, Industry bodies and Professional bodies.

The responsibilities and administrative burden applicable to the various role players discussed in this chapter will therefore have a significant impact on these organisations.

This chapter continued with theory development, by providing the conceptual framework of the role players in the dividend tax value chain, as well as their roles and responsibilities in terms of the new legislation.

The next chapter will provide an illustration of the application of the research methods. The chapter will specifically articulate the application of the descriptive analysis on the position of the organisation that is the subject of the case study prior to the introduction of dividends tax, the steps that the organisation had to take to ensure that it was adequately prepared for the introduction of the new tax, as well as an evaluation of the adequacy of the steps taken subsequent to the effective date. The chapter will also summarise the feedback received from the survey participants who were contacted. The chapter will finally conclude with an evaluation of the preparations for the introduction of dividends tax, as well as a summary of the success factors identified from the perspectives of both the organisation that is the subject of the case study and the survey participants.

CHAPTER 5

APPLICATION OF RESEARCH METHODOLOGY

5.1 INTRODUCTION

Primary data was collected by way of a case study, as well as questionnaires directed at identified survey participants. These data collection tools were selected because the research objective involves both elements of fact (where a “yes” or “no” answer will suffice) and of perception, where the respondents may want to explain their responses.

The researcher commenced with a study of the current literature on the subject, relevant sections of the Act and the BRS published by SARS. The researcher firstly used the results of this study to identify the actions that all identified role players have to take to ensure that they comply with the requirements of the dividends tax legislation. This was discussed in chapter four of this document.

The researcher is employed by a prominent financial services organisation and performed a case study on the preparations made by this organisation for the implementation of dividends tax. The situation prior to the implementation date, the preparations made for the implementation of dividends tax and the situation after the implementation date, was observed. Data was collected in a series of semi-structured interviews with the following:

- the head of the centralised taxation department,
- the head of the team responsible for the implementation of dividends tax,
- the manager responsible for third party payments,
- a representative of the company secretarial office, and
- a member of the team responsible for tax compliance.

Finally, responses to questionnaires directed at the survey participants were analysed.

5.2 CASE STUDY

5.2.1 Background on organisation

The organisation that is the subject of the case study is a prominent listed group in the financial services and banking industry that provide banking and investment products and services to retail, commercial, corporate and public sector customers. The holding company is a controlling company in respect of a bank as defined in terms of the Banks Act (Banks Act, No. 94 of 1990).

The group is differentiated by its unique business philosophy, de-centralised structure, owner-manager culture and portfolio branding strategy. The group provides a comprehensive range of products and services to the South African market and niche products in certain international markets.

The group structure consists of a listed holding company with subsidiaries in the banking and investment industries. Ownership of the holding company is vested in amongst others, corporates, pension funds, insurance companies, unit trusts, other managed funds and private investors.

The organisation's operations include a retail and investment banking division, an asset finance function, as well as a centralised treasury division.

The organisation is therefore both the receiver and the payer of dividends at various levels in the group structure and have outsourced the maintenance of the holding company's share register, as well as the administration and payment of dividends declared by it, to Computershare Limited.

Several of the business units in the organisation are CSDPs and are therefore regulated intermediaries, while the administration and payment of the ordinary and preference dividends declared by the subsidiaries of the holding company are administered jointly by the respective business units and the centralised tax compliance department.

Normal dividends are declared twice a year, while dividends on preference shares are declared at various intervals during the year. Restructuring in the group, amalgamations, unbundling transactions, mergers and acquisitions in the normal course of activities of organisations of this size and nature, also result in dividends *in specie* and special dividends declared by and within the group.

Furthermore, the investment banking division enters into various structured deals, whereby the company invests in unlisted equities (ordinary equity shares, preference shares, etc.) resulting in the company being the recipient of dividends throughout the year. The company is also invested in various diversified listed investment portfolios. In such structures, dividends may be ceded or manufactured in securities lending or borrowing transactions.

The board of directors is accountable for ensuring appropriate corporate governance practices. Good corporate governance is fundamental to a successful business. The board delegated the responsibility for managing the group's tax risk to a centralised taxation department. The centralised taxation department has been tasked with managing the group's tax risks, in conjunction with the business owners of each of the operating divisions.

The head of the centralised taxation department also takes overall responsibility for tax compliance management in the group. This is done through specialist departments, being Tax Risk Management, Tax Compliance, Indirect Tax and Employees' Tax and Benefits, incorporating third party data reporting.

Where it is deemed appropriate, tax risk specialists are deployed to the relevant divisions in the group in order to provide transactional support and advice to that division in order to assist in mitigating tax risks and ensuring that tax opportunities are identified, and in order to co-ordinate the interaction between that division and the various specialist areas within the centralised tax function

Interaction with SARS is coordinated by the centralised taxation department. All requests for information from SARS where the head of the centralised taxation department is the Public Officer, is co-ordinated, prepared and submitted by the department. All meetings with SARS are attended by the requisite members of the centralised taxation department in order for the department to be aware of all information disclosed to SARS.

The centralised taxation department is actively involved in the industry and professional bodies impacting on its business environment, particularly the SAICA National Tax Committee and BASA, and through this involvement, the tax department is also continually engaging with SARS and National Treasury. The department maintains a working relationship with the Tax Policy division of the National Treasury, in order to lobby effectively for necessary legislative changes and in order to comment on all draft legislative amendments, which may adversely impact the group.

In order to prepare for dividends tax, the organisation's approach was to assign the ultimate responsibility to a key individual in the centralised tax department. The individual that was selected to take accountability for the preparations is the head of the team responsible for employees' tax and benefits and third party payments.

5.2.2 Situation prior to the introduction of dividends tax

Before the introduction of dividends tax, the centralised taxation department kept records of all dividends declared and received in the group, calculated the STC liability and maintained record of STC credits. All STC returns were completed and submitted centrally.

Dividends declared

Processes for recording dividends declared by companies in the group involved close liaison between the centralised tax department and the Company Secretarial office. The Company Secretarial office would ensure that the centralised tax department receive copies of all resolutions as evidence that dividends were declared. This ensured that the dividends declared were included in the STC record keeping mechanism in a timely fashion. It also ensured that the STC returns were submitted and the STC payments were made in accordance with the timelines defined in the Act.

The record keeping function also included reconciliations between the financial information recorded in the general ledger and the STC records.

In the case of the normal dividends declared, the actual payment of the dividends was made by Computershare Limited, the company that the organisation contracted with. Preference dividends were declared in accordance with the preference share agreements.

The actual payment was made by the accounting and administrative functions within the group.

Irrespective of who paid the dividend, the dividend payment was communicated to the centralised tax function to record, submit the STC return, calculate and pay over the STC if necessary.

Dividends declared were recorded on an aggregate basis and was only split in accordance with the following categories: ordinary dividends and preference dividends. There was no need to identify individual shareholders.

Dividends received

The process for recording of dividends received involved reliance on communication from the business units, as well as the reconciliation between the financial information recorded in the general ledger and the STC records.

Dividends received were also reconciled to the underlying source systems that recorded the deal model information in the investment banking division.

Dividends received impacted the completion of the STC return for a particular dividend cycle, as well as the calculation of STC payable.

Returns

An IT 56 return was prepared and submitted for each dividend cycle by the centralised tax department within the time periods specified by the Act.

Reconciliations

The STC records were reconciled to the general ledger on a monthly basis.

Deferred tax

Unutilised STC credits gave rise to a deferred tax asset in the financial statements. The centralised tax department was responsible for the calculation and reconciliation of the deferred tax asset balance to the STC reconciliation.

Internal controls in place

Due to the size of the organisation and the diversity of its trading activities, various source systems provided dividend information. The most efficient manner of consolidating and reconciling the information was to identify an individual in the tax compliance team whose responsibility it was to maintain a register of all dividends declared and received in Microsoft Excel.

To mitigate the risks inherent to manual processes and the use of spreadsheets, the department implemented various compensating controls. This included controlled access to the spreadsheet, controls over the formulae in the spreadsheet, reconciliations to the underlying supporting source systems and manual oversight and review.

Reporting to the governance structures

In keeping with the organisation's risk management and reporting framework, the centralised tax department included the key risks associated with STC in its risk registers. These risks were monitored and reported on to the Tax Risk Committee on a quarterly basis.

5.2.3 Preparations for the introduction of a new tax

Pre-legislation

Through its involvement with BASA and SAICA, the centralised tax department became involved in discussions with National Treasury at the initiation phase, before the legislation was promulgated. These discussions included the submissions on which party should withhold dividends tax.

Post-legislation

Once the basic dividends tax legislation was promulgated in 2010, the business community and regulated intermediaries were in continuous discussion with SARS regarding the *when, what* and *how* of dividends tax calculations and payments. These discussions also included discussions on the format of submissions.

SARS established a working group consisting of ASISA, CSDP, BASA, JSE, STRATE and Computershare in July 2011, and the tax department through its membership of BASA, continued its involvement in the discussions through its industry body, BASA.

The tax department also actively participated and answered the calls for comment on the DTLABs, the technical amendments published by SARS and the explanatory memoranda issued by the National Treasury, by making submissions to BASA.

The working group was initially to implement and prepare for dividends tax, but since the implementation date, the group continue to meet to discuss solutions to practical problems and to escalate matters to SARS and the National Treasury.

Centralised tax department

In order to assist the business units in the group for the preparation for dividends tax, the centralised taxation department established a working group consisting of the tax specialist, representatives from business and representatives from the information technology department (IT). A process tracker report was designed whereby the percentage system readiness was monitored, the submission channel was documented as either E@syfile or Connect Direct TM, progress on information brochures and declarations to clients, progress on communication regarding budget changes in rate and STC credit period communicated to clients, list of outstanding issues, and where applicable, action plans and target dates for completion of these plans.

Business decisions

Business decisions had to be taken regarding the utilisation of existing STC credits, related deferred tax assets and the timing of the last dividend cycle. The gross up of dividends on preference shares and the investment strategy related to the income funds also had to be reconsidered.

Another critical business decision that had to be taken was the selection of the appropriate submission channel to SARS. The application that business had decided on was Connect Direct ^{TM}, which allows for varying volumes of submissions to SARS within a secure controlled environment.

Submission channels

SARS introduced the additional direct data flow channel (in addition to e@syFile^{TM} electronic submission, e-Filing and SARS branch manual capturing, which caters for limited volumes only). The additional direct data flow channel so introduced will be used for processing large volumes of data. This new channel was envisioned to reduce the overall administrative burden of large volume data transfer and shorten data processing cycle times.

The new direct data flow channel will use the Connect Direct TM technology. Taxpayers that elected to use Connect Direct TM is required to purchase the technology and must be in possession of a security certificate to authenticate each file submission. The taxpayer will also be required to authorise the data submission as a means of declaring the accuracy of the data to SARS. SARS offered taxpayers an opportunity to contribute towards the effective implementation of the modernised Third party data platform, by participating in a testing initiative that will precede full implementation.

After liaison with the Chief Information Officer for the group, it was decided that the best solution was to have one secure data point on a centralised basis and one Connect Direct ^{TM} license.

The decision was also taken to participate in the testing initiative instituted by SARS.

A project was registered with the organisation's Project Management Office and thirteen business units were identified that needed access to Connect Direct ™. The following objectives were articulated:

- Training of staff on access to Connect Direct ™ and submission to SARS.
- Clearly defining and designing the connection and submission processes.
- The successful implementation of the application.

BRS

SARS proceeded to make the first draft of its BRS available in November 2011, leaving business with the practical problem of having its IT get ready between November and 1 April 2012, taking into consideration that December involves an IT shutdown, as well as the fact that it is a time where staff are usually on leave. That left the company with three months to achieve systems readiness.

An operations manager within the department was assigned the responsibility for ensuring that the BRS requirements are met.

Internal and external communication

In order to create awareness amongst staff members not already involved in the preparations for dividends tax, a newsletter to staff was prepared and distributed to the full staff complement. At the same time, newsletters to clients and clients of Regulated Intermediaries were also prepared and made available to clients, including publishing on the company websites.

Training was also provided for all staff involved in the dividends tax processes and was presented by a subject matter expert.

Reporting to the governance bodies

During the pre-implementation date period, quarterly reporting to the tax risk committee on the progress of the preparations made kept the governance structures informed and enabled them to fulfil their oversight roles. The report in March 2012 to the Tax Risk Committee indicated that the organisation is prepared for dividends tax.

Costs

Preparing for the implementation of dividends tax had significant financial implications for the group. These costs included the cost of installing the submission application, license fees, cost of training staff, cost of employing additional staff and internal costs.

5.2.4 Situation after the effective date

The process for managing dividends tax after the implementation date can be categorised into three broad categories. Firstly, the holding company whose dividends are paid by Computershare, secondly the subsidiary companies that pay and administer their dividend payments internally and finally, the CSDPs who act as regulated intermediaries who administer and pay dividends on behalf of third parties.

Holding company

The holding company has a large number of shareholders and ownership is vested in amongst others, corporates, pension funds, insurance companies, unit trusts, other managed funds and private investors. The maintenance of the share register and the payment of dividends have been outsourced to Computershare Limited.

When dividends are declared, the company secretarial office prepares the draft Stock Exchange News Service (Sens) announcement based on directors' resolutions, declaring the dividends. The draft Sens announcement, together with an STC credit declaration form (an internally designed form) containing the details of the dividend declared, is then sent to the centralised tax compliance department who maintain record of the STC credits allocated to the company on dividends received.

The tax compliance department then completes the STC credit declaration form with the STC credits allocated to the dividend and returns the final document to the company secretarial office. The company secretarial office then arranges for the directors to sign the final resolution, where-after it is sent to the JSE and to Computershare Limited.

Computershare Limited pays the dividends to the beneficial owners or to other regulated intermediaries, as the case may be, after withholding dividends tax in accordance with the requirements of the Act. Computershare Limited is also responsible to pay the dividends tax to SARS within the timeframes specified in the Act.

Computershare Limited is responsible for communicating the timing requirements for declarations to beneficial owners, as well as for maintaining a record of declarations received and maintaining a record of refunds due.

Subsidiary companies

The subsidiary companies have a limited number of ordinary shareholders, as well as a limited number of preference shareholders and the payment of dividend is administered internally.

A similar process is followed with respect to the Sens announcement process. However, once finalised and signed by the directors, the announcement is sent to the JSE for the dividends on the listed shares only.

The relevant business divisions are responsible for communicating the requirements for declarations to the shareholders and for maintaining a record of the declarations received.

Refunds to the beneficial owners due to declarations received after the dividends have been paid, but prior to a three year period as specified in the Act, will be refunded from the dividends tax payable in the following months. This is possible due to the preference dividends that are paid monthly.

The preparation and submission of the submission files in accordance with the BRS published by SARS have been outsourced to an external vendor. This is due to the limited number of shareholders involved. The payment of the dividends tax to SARS is made by the business division.

The centralised tax compliance department is responsible for completing the dividends tax return on e-filing and once SARS is able to pre-populate the returns, the centralised tax department will remain responsible for the filing of the return on e-filing.

CSDPs

The regulated intermediaries in the group receive and pay large volumes of dividends on a daily basis. A process for collecting declarations, preparing the upload file, paying the dividends and the dividends tax had to be established in the operational processes of these business units.

The CSDPs act on the Sens announcements that they receive. The CSDPs proceed to pay dividends to the beneficial shareholders or other regulated intermediaries, as the case may be and to withhold dividends tax and pay it over to SARS. The Sens announcement will contain the necessary information of any STC credits allocated to the dividends received.

Refunds to the beneficial owners due to declarations received after the dividends have been paid, but prior to a three year period as specified in the Act, will be refunded from the next dividends tax payment.

The CSDPs will be submitting the submission files via Connect Direct TM and are currently taking part in the testing initiative that is preceding full implementation. The CSDPs are responsible for the completion of the dividends tax returns on e-filing. Once SARS is able to pre-populate the returns, the CSDPs will remain responsible for filing the return on e-filing.

Continuing role of the centralised tax department

The centralised tax department continue with their support role in the implementation of dividends tax. This is done by continuing with the centralised oversight of the dividends tax processes.

A specialised role was established within the department to deal with third party payments and communication with SARS. This oversight function is responsible for monitoring the submissions to SARS through the elected submission channel, as well as centralised communication with SARS.

All communication to the beneficial owners is also centrally coordinated to ensure consistency in the group. A centralised "Frequently Asked Questions" database has also been established to enable knowledge sharing and consistency amongst the business units.

The recording of STC credits that were transferred to the group is also centralised. The tax compliance team within the centralised tax department records all dividends received and the STC credits accompanying those dividends. Dividends received are reconciled to the general ledger and to the investing division's deal models to ensure the completeness of the dividends received record. This register is updated with all STC credits allocated to dividend declarations.

Returns

Submission files are sent to the centralised IT environment. However, since SARS is not yet able to process these files and pre-populate the dividends tax returns, returns are populated and submitted manually by each business unit responsible for submission.

Governance

Dividends tax was incorporated in the risk registers of the centralised tax department and the governance framework documentation of the department was updated to include dividends tax.

Key risk drivers identified include the timely reporting to the centralised tax compliance department of all dividends paid and received, the correctness of resolutions passed, the timely submission of information pertaining to STC credits and evidence of payments to SARS.

5.2.5 Conclusion

An organisation in the financial services and banking industry has various roles to play in the dividends tax value chain and in terms of the new dividends tax legislation, these organisations have the responsibility to withhold dividends tax and pay it over to SARS.

Due to the complexity of the operations and volumes and amounts of dividends declared and received by these organisations, extensive preparations had to be undertaken to ensure that these organisations are adequately prepared for the introduction of the new dividends tax.

These organisations were involved in the dividends tax process before implementation through involvement in industry bodies and professional bodies, and had an opportunity to influence and provide input at the pre-legislation stage. Once legislation was finalised, business decisions regarding STC credits, submission channels and investment products had to be taken.

As is evident from the discussions with the centralised tax department, dividends tax had a significant impact on the organisation and many areas within the business are affected. Even though the organisation was prepared for dividends tax on 1 April 2012, several problems relating to the implementation of dividends tax was documented. Many of these issues will have to be resolved through the industry bodies, while others will be resolved once the SARS submission channels have been fully implemented by SARS.

The organisation successfully accounted for its first dividends after the implementation date and the success factors making this possible were identified. These success factors are discussed in 5.4 below.

5.3 SURVEY RESULTS

5.3.1 Introduction

Knowledgeable persons in the field of dividends tax were identified and was contacted by the researcher via email. The questionnaire was designed electronically using the SurveyMonkey ™ research tool.

The individuals invited to take part in this research were deliberately selected from the following areas: The Regulator, Professional Bodies, Professional Advisory organisations and Corporates.

The questionnaires required these individuals to respond to questions regarding their opinion on the degree of preparedness of organisations in the financial services and banking industries for the successful implementation of dividends tax.

It further required these individuals to provide their opinion on what each of the role players in the dividends tax value chain could have done differently during the implementation of dividends tax. The purpose of this open-ended question was to identify success factors critical to the successful implementation of the new tax.

5.3.2 Analysis of responses

The responses were analysed based on the following:
Questions requiring a “yes” or “no” answer was aggregated per question.

Questions requiring an answer indicating a degree of preparedness were aggregated per question and the response rate from all respondents per degree of preparedness in a particular category.

The responses to the open-ended questions was summarised and analysed in the following manner:

- Responses were compressed to condense the meaning of large amounts of text into fewer words (Saunders *et al.,* 2009:491).
- Responses were then scrutinised to identify meaningful categories of responses.
- Responses were then allocated to the categories identified.
- The responses were then aggregated per category.

Responses to the first question:

Question:

In your opinion, to what extent are South African companies in the financial services and banking industries prepared for dividends tax?

The respondents were required to select one of the following options for each of the key areas below:

1. Most companies are adequately prepared. (All key legislative and administrative requirements will be met).
2. Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met).
3. Most companies are prepared to a limited extent. (A limited number of key legislative and administrative requirements will be met).
4. Most companies are not adequately prepared. (A few of the key legislative and administrative requirements will be met).

Key areas:

- Legislation: Companies are fully knowledgeable / have an understanding of dividends tax legislation.
- Administrative requirements: Companies understand the administrative requirements from SARS in relation to dividends tax.
- Systems readiness: The systems, applications and databases utilised by companies are able to generate the management information necessary for the administration of dividends tax.
- Internal record keeping: Companies are able to maintain records of identification of beneficial owners.

- Internal record keeping: Companies are able to maintain records of STC credits available for set off against dividends tax payable.
- Internal record keeping: Companies are able to maintain records declarations received from exempt shareholders.
- Internal record keeping: Companies are able to maintain records of declarations received from shareholders who qualify for dividends tax at a reduced rate.
- Internal record keeping: Companies are able to maintain records of refunds due to shareholders.

The results of the survey responses were as follows:

<u>Legislation: Companies are fully knowledgeable / have an understanding of dividends tax legislation.</u>

25% of the respondents selected option 1: Most companies are adequately prepared. (All key legislative and administrative requirements will be met), while 75% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met)

This indicates that in the participants' opinion, companies in the financial services and banking industries are somewhat knowledgeable and have an understanding of dividends tax legislation.

<u>Administrative requirements: Companies understand the administrative requirements from SARS in relation to dividends tax.</u>

100% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met)

This indicates that in the respondents' opinion, companies in the financial services and banking industries mostly understand the administrative requirements from SARS in relation to dividends tax.

<u>Systems readiness: The systems, applications and databases utilised by companies are able to generate the management information necessary for the administration of dividends tax.</u>

25% of the respondents selected option 1: Most companies are adequately prepared. (All key legislative and administrative requirements will be met), while 75% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met)

This indicates that in the respondents' opinion, the systems, applications and databases utilised by companies are mostly able to generate the management information necessary for the administration of dividends tax.

<u>Internal record keeping: Companies are able to maintain records of identification of beneficial owners.</u>

25% of the respondents selected option 1: Most companies are adequately prepared. (All key legislative and administrative requirements will be met), while 75% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met).

This indicates that in the participants' opinion, companies in the financial services and banking industries are mostly able to maintain records of identification of beneficial owners.

<u>Internal record keeping: Companies are able to maintain records of STC credits available for set off against dividends tax payable.</u>

50% of the respondents selected option 1: Most companies are adequately prepared. (All key legislative and administrative requirements will be met), 25% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met) and 25% of the respondents selected option 3: Most companies are prepared to a limited extent. (A limited number of key legislative and administrative requirements will be met)

This indicates that in the participants' opinion, companies in the financial services and banking industries are only able to maintain records of STC credits available for set off against dividends tax payable to a certain extent.

<u>Internal record keeping: Companies are able to maintain records declarations received from exempt shareholders.</u>

50% of the respondents selected option 1: Most companies are adequately prepared. (All key legislative and administrative requirements will be met), while 50% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met).

This indicates that in the participants' opinion, companies in the financial services and banking industries are for the most part able to maintain records declarations received from exempt shareholders.

<u>Internal record keeping: Companies are able to maintain records of declarations received from shareholders who qualify for dividends tax at a reduced rate.</u>

67% of the respondents selected option 1: Most companies are adequately prepared. (All key legislative and administrative requirements will be met), while 33% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met).

This indicates that in the participants' opinion, companies in the financial services and banking industries are mostly able to maintain records of declarations received from shareholders who qualify for dividends tax at a reduced rate.

Internal record keeping: Companies are able to maintain records of refunds due to shareholders.

25% of the respondents selected option 1: Most companies are adequately prepared. (All key legislative and administrative requirements will be met). 50% of the respondents selected option 2: Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met) and 25% of the respondents selected option 3: Most companies are prepared to a limited extent. (A limited number of key legislative and administrative requirements will be met).

This indicates that in the participants' opinion, companies in the financial services and banking industries are not fully able to maintain records of refunds due to shareholders.

Areas where the participants are confident in the financial services and banking industries' preparations for the introduction of dividends tax are: legislation and certain elements of internal record keeping, while areas that require improvement are systems readiness, meeting the administrative requirements, record keeping of declarations received, identification of beneficial owners and refunds.

Responses to the second question:

Question:
In your opinion, do shareholders understand what is required of them in terms of the declarations they need to make should they qualify for exemption from dividends tax or qualify for a reduced rate?

50% of the respondents were of the opinion that shareholders understand what is required of them in terms of the declarations they need to make should they qualify for exemption from dividends tax or qualify for a reduced rate, while the remaining 50% are of the opinion that shareholders do not understand what is required of them in terms of the declarations they need to make should they qualify for exemption from dividends tax or qualify for a reduced rate.

This indicates that in the participants' opinion, only some of the shareholders understand what is required of them in terms of the declarations they need to make should they qualify for exemption from dividends tax or qualify for a reduced rate.

Responses to the third question:

Question:

In your opinion, is the financial services and banking industry prepared for dividends tax?

50% of the respondents were of the opinion that the financial services and banking industry is prepared for dividends tax, while the remaining 50% are of the opinion that financial services and banking industry are not prepared for dividends tax.

This indicates that in the participants' opinion, financial services and banking industry are only somewhat prepared for dividends tax.

Responses to the fourth question:

Question:

In your opinion, are regulated intermediaries prepared for dividends tax?

50% of the respondents were of the opinion that regulated intermediaries are prepared for dividends tax, while the remaining 50% are of the opinion that regulated intermediaries are not prepared for dividends tax.

This indicates that in the participants' opinion, regulated intermediaries are only somewhat prepared for dividends tax.

5.3.3 Conclusion

In conclusion, the participants are of the opinion that the financial services and banking industries are somewhat prepared for dividends tax. While these organisations have the necessary background to, and knowledge of the legislative changes, they face significant challenges in ensuring that the administrative and systems requirements can be met.

5.4 CRITICAL SUCCESS FACTORS

5.4.1 Success factors identified during literature review

Several authors have listed steps that have to be taken to ensure the successful implementation of dividends tax.

Passmore (2012) emphasised the importance of having the right systems in place, as well as the development of new accounting, reporting and internal control systems.

Planting (2012) identifies obtaining information from shareholders and taking into account the way in which the industry is structured, clear lines of communications between the company, regulated intermediaries and shareholders and the standardisation of forms, procedures and communication lines as important to an efficient system.

Planting (2012) further emphasised the importance of companies knowing the profile of their shareholders and reconsideration of their dividend policy.

Companies and shareholders should increase their awareness of the new regime so as not to be caught off guard (Gangat, 2012).

PricewaterhouseCoopers (2011) lists a comprehensive process of information gathering, a clear line of communication between the company, regulated intermediary and shareholder and the standardisation of forms, procedures and communication lines as important to an efficient system.

5.4.2 Success factors identified during case study

During the interviews with staff members of the organisation that is the subject of the case study and in answer to a specific question as to what the success factors for the successful implementation of dividends tax were, the following were identified:

Proactive involvement

The organisation is actively involved in its industry body, BASA, and was subsequently involved in the pre-legislation engagement between National Treasury and the business community. Once the legislation had been finalised, the organisation was involved in the working group established by SARS and continued its involvement after the implementation date. The organisation simultaneously established an internal working group to ensure that the internal processes.

This enabled the organisation to be up to date with the continuously evolving requirements of the Regulator, as well as establishing a line of communication with the Regulator.

Centralised oversight

Centralised oversight from both an industry perspective and an internal organisational perspective are key elements to the successful implementation of dividends tax.

The establishment of an industry working group enabled the industries represented to communicate unique and unanticipated consequences of the new legislative and administrative requirements to the regulator. Furthermore, subsequent to the implementation date, the function of the working group evolved into a continuous communication channel between the regulator and industry.

Centralised oversight within the organisation was established by forming an internal working group with representatives from business, information technology and tax. This enabled clear lines of communication and consistency in approach across the affected business units. This also enabled the monitoring of progress made by the business units leading up to the implementation date.

The centralisation of a secure data collection point for the submission files via Connect Direct ™ enabled the monitoring of progress made in the preparation of the submission files that comply with the BRS published by SARS. It also enables the communication of common issues identified in the feedback from SARS. It allowed the organisation to establish a single secure environment, as well as establishing economies of scale and obtaining a single license.

After the implementation date, the centralised tax department established a unit responsible for third party data. This unit serves as the communication channel to the regulator. The unit also established "Frequently Asked Questions" database. This ensures that there is a single point of contact with the regulator, while simultaneously enabling knowledge sharing among the business units.

Communication

Central communication lines within the organisation as well as to shareholders are considered key to the successful implementation of dividends tax.

The organisation implemented standard declaration templates and communiqués to its shareholders to ensure that shareholders do not receive conflicting messages from different areas of the same organisation.

Communication between the regulator, the industry body BASA and the organisation was also centralised during the pre-implementation date period, ensured that the business units all received the same message on the latest developments. This process also facilitated knowledge sharing among the affected business units, as well as creating a channel to the industry body for escalation to the regulator of issues and anomalies identified.

The centralised tax department established a centralised unit responsible for third party data as discussed above. This unit serves as the communication channel to the Regulator. The unit also established "Frequently Asked Questions" database. This ensures that there is a single point of contact with the regulator, while simultaneously enabling knowledge sharing among the business units.

5.4.3 Success factors identified during the survey

Responses to the fifth question:

Question:
What could the following parties have done differently that would have ensured that South African companies are better prepared for the introduction of dividends tax?

The responses referring to National Treasury indicated that publicising more widely, would contribute to companies being better prepared for the introduction of dividends tax.

The responses referring to SARS indicate that offering of additional workshops and the provision of examples and calculations would contribute to companies being better prepared for the introduction of dividends tax.

The responses referring to industry bodies and professional bodies indicated that keeping their members informed of the changes in legislation, explaining the consequences of the changes in legislation and the offering of additional workshops as contributing factors for the successful introduction of dividends tax.

The responses referring professional advisory services companies also indicate that additional workshops would contribute to the successful introduction of dividends tax.

South African resident companies are encouraged to make it mandatory for all staff to attend workshops, while shareholders are also encouraged to attend workshops.

5.4.4 Conclusion

Through a review of the literature, observations during the case study and analysis of the opinions of the survey participants, several common themes were identified that are critical to the successful implementation of dividends tax.

These themes include communication between the business community and the regulators, as well as communication within the organisations.

Involvement in and by the industry bodies has also been identified as critical to the successful implementation of dividends tax, while the timely preparation and communication of the regulatory reporting requirements is essential to the process.

Within organisations, centralised oversight enables the coordinated preparation and implementation of the new tax.

Responses received from the survey participants mostly revolve around communication and training as essential elements to ensure the successful implementation of dividends tax.

This chapter provided an illustration of the application of the research methods. The chapter articulate the application of the descriptive analysis on the position of the organisation that is the subject of the case study prior to the introduction of dividends tax, the steps that the organisation had to take to ensure that it was adequately prepared for the introduction of the new tax, as well as an evaluation of the adequacy of the steps taken subsequent to the effective date. The chapter also summarised the feedback received from the survey participants in the field that were contacted. Finally, the chapter concluded with an evaluation of the preparations for the introduction of dividends tax, as well as a summary of the success factors identified from the perspectives of both the organisation that is the subject of the case study and the survey participants.

The next chapter will continue to summarise the evaluation of the preparations for the introduction of dividends tax and identify potential areas for further research.

CHAPTER 6

CONCLUSION

6.1 INTRODUCTION

The research objectives of this study were to evaluate the preparations made for the implementation of dividends tax on 1 April 2012 and to identify potential success factors that are critical to the successful implementation of any new tax. This chapter will proceed to conclude on the results of the case study and the responses received from the identified survey participants.

6.2 PREPARATIONS FOR THE INTRODUCTION OF DIVIDENDS TAX

Tax legislation continually evolves with new taxes introduced or changes made to existing tax legislation. These new taxes often require extensive preparations by the role players involved in the taxation value chain.

The new dividends tax legislation imposed and continues to impose a significant administrative burden on companies and regulated intermediaries. Professional bodies, such as SAICA and industry bodies such as BASA had to consult with their members and liaise with SARS and National Treasury, and audit accounting and professional advisory firms had to keep their clients informed of the impact of the new dividend tax.

While National Treasury was responsible for drafting, refining and ensuring the technical soundness of the dividends tax legislation, SARS, as the administrator of dividends tax, needed to prepare for the manner in which information and dividends tax returns will be submitted, the BRS and the submission channels.

Any organisation in the financial services and banking industry had various roles to play in the dividends tax value chain. Due to the complexity of the operations and volumes and amounts of dividends declared and received in these organisations, extensive preparations had to be undertaken to ensure that these organisations are adequately prepared for the introduction of the new dividends tax.

Discussions with the centralised tax department of the organisation that was the subject of the case study indicated that dividends tax had a significant impact on the organisation and many areas within the business were affected. Even though the organisation was prepared for dividends tax on 1 April 2012, several problems relating to the implementation of dividends tax was documented. Many of these issues will have to be resolved through the industry bodies, while others will be resolved once the SARS submission channels have been fully implemented by SARS.

The organisation successfully accounted for its first dividends after the implementation date and the success factors making this possible were identified.

The survey participants are of the opinion that other organisation in the financial services and banking industry are somewhat prepared for the introduction of dividends tax and that these organisations are knowledgeable of the legislative and administrative requirements. These organisations are however not fully prepared to meet the administrative and systems requirements.

6.3 CRITICAL SUCCESS FACTORS

Through a review of the literature, observations during the case study and analysis of the opinions of the survey participants, several common themes were identified that are critical to the successful implementation of dividends tax.

These themes include communication between the business community and the regulators, as well as communication within the organisations.

Involvement in and by the industry bodies has also been identified as critical to the successful implementation of dividends tax, while the timely preparation and communication of the regulatory reporting requirements is essential to the process.

Within organisations, centralised oversight enables the coordinated preparation and implementation of the new tax.

Communication and training initiatives were also identified as essential to the successful implementation of dividends tax.

6.4 FINAL CONCLUSION

Preparing for the implementation of dividends tax was an enormous task undertaken by National Treasury, SARS, companies, professional bodies, industry bodies and advisory organisations alike. Several common themes were identified that are critical to the successful implementation of dividends tax. These themes include communication between the business community and the regulators, as well as communication within the organisations. Involvement in and by the industry bodies has also been identified as critical to the successful implementation of dividends tax, while the timely preparation and communication of the regulatory reporting requirements is essential to the process. Within organisations, centralised oversight enables the coordinated preparation and implementation of the new tax.

6.5 SUGGESTIONS FOR FURTHER RESEARCH

The introduction of any new tax is invariable accompanied by regulatory and administrative requirements that have to be met. Changes to existing legislation or changes to the regulatory reporting requirements of existing legislation may be similarly accompanied by new and additional administrative requirements. Further investigation into the identification of critical success factors necessary for the successful implementation of other new taxes, amendments to existing taxes or amendments to the regulatory reporting requirements applicable to existing taxes, is recommended as further research.

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APPENDIX A

- Data collection instrument (-s) -

Questionnaire

An evaluation of the preparations made for the successful implementation of dividend tax.

Dear respondent

Thank you for your willingness to complete this survey. The purpose of the survey is to determine your perceptions of the adequacy of the preparations made for the successful implementation of a new tax. The survey should not take more than 10 minutes to complete. This is an anonymous and confidential survey. You cannot be identified and the answers you provide will be used for research purposes only.

Please answer all the questions. There are no right or wrong answers. We are interested in understanding your perceptions of the adequacy of the preparations made for the successful implementation of a new tax. Mark the appropriate box with an **X**.

1. In your opinion, to what extent are South African companies in the financial services and banking industries prepared for dividends tax?

	Most companies are adequately prepared. (All key legislative and administrative requirements will be met)	Most companies are somewhat prepared. (The majority of key legislative and administrative requirements will be met)	Most companies are prepared to a limited extent. (A limited number of key legislative and administrative requirements will be met)	Most companies are not adequately prepared. (A few of the key legislative and administrative requirements will be met)
Legislation. Companies are fully knowledgeable / have an understanding of dividends tax legislation.				
Administrative requirements. Companies understand the administrative requirements from SARS in relation to dividends tax.				

Systems readiness. The systems, applications and databases utilised by companies are able to generate the management information necessary for the administration of dividends tax.				
Internal record keeping. Companies are able to maintain records of:				
• Identification of beneficial owners				
• STC credits available for set off against dividends tax payable.				
• Maintenance of records of declarations received from exempt shareholders.				
• Maintenance of records of declarations received from exempt shareholders.				
• Refunds due to shareholders				

2. In your opinion, do shareholders understand what is required of them in terms of the declarations they need to make should they qualify for exemption from dividends tax or qualify for a reduced rate?

Yes	
No	

3. In your opinion, is the financial services and banking industry prepared for dividends tax?

Yes	
No	

4. In your opinion, are regulated intermediaries prepared for dividends tax?

Yes	
No	

5. Tax change is inevitable. What could the following parties have done differently that would have ensured that South African companies are better prepared for the introduction of dividends tax?

National Treasury	
SARS	
The industry body that you are a member of (if applicable)	
Professional bodies (e.g. SAICA)	
Professional Advisory Services Companies	

Thank you for completing the survey.

We appreciate your assistance.

APPENDIX B

- Informed consent form -

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Faculty of Economic and
Management Sciences

Informed consent for participation in an academic research study

Dept. of Economic and Management Sciences

AN EVALUATION OF THE PREPARATIONS MADE FOR THE IMPLEMENTATION OF DIVIDENDS TAX.

Research conducted by:
Ms. J. Cason (88374654)
Cell: 080 650 2991

Dear Respondent

You are invited to participate in an academic research study conducted by Janine Cason, a Masters student from the Department of Economic and Management Sciences at the University of Pretoria.

The purpose of the study is to evaluate whether National Treasury, the South African Revenue Service and the South African business community (being South African resident companies, Industry bodies, Professional bodies, Professional advisory services companies and the like) are adequately prepared for the introduction of the new dividends tax.

Please note the following:

- This study involves an anonymous survey. Your name will not appear on the questionnaire and the answers you give will be treated as strictly confidential. You cannot be identified in person based on the answers you give.
- Your participation in this study is very important to us. You may, however, choose not to participate and you may also stop participating at any time without any negative consequences.
- Please answer the questions in the attached questionnaire as completely and honestly as possible. This should not take more than 15 minutes of your time
- The results of the study will be used for academic purposes only and may be published in an academic journal. We will provide you with a summary of our findings on request.
- Please contact my supervisor, (Mr P Manyaka at pulengm@saica.co.za) if you have any questions or comments regarding the study.

Please sign the form to indicate that:

- You have read and understand the information provided above.
- You give your consent to participate in the study on a voluntary basis.

____

Respondent's signature

____

Date