

Executive share schemes – proposed amendment:

Section 8C of the Income Tax Act deals with the taxation of equity based incentive schemes available to both directors and those employees generally characterised as 'top management'. These equity instruments (which include shares, share options and member's interests) are taxed when they are deemed to vest in the director or employee and can be classified as either restricted (for example a share option scheme where the option can only exercised after a period of say, three years) or, unrestricted.

In terms of current legislation where a holder of a restricted instrument receives a capital distribution this is treated as ordinary revenue and subject to tax. Dividends (whether in respect of restricted or unrestricted instruments) - which are generally subject to STC - are exempt from taxation in the hands of the holder. SARS are proposing to align the treatment of both capital distributions and dividends, as these are considered as partial cash-outs of the instrument' and both events are to be treated as ordinary revenue. This will result in such dividends being included in the taxable income of the holder. This proposal has met with criticism as in most circumstances the result will be an effective 57% tax on the dividend received whilst In normal circumstances these (apart from foreign dividends) are exempt from tax.

Should this proposal be implemented by SARS the consequences may be extremely costly for any client participating in such an incentive scheme and we therefore advise that should you have any concerns as to the implication for either you or your company that you contact us for further advice.

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