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## **SARS'S FEUD WITH DIVIDEND STRIPPING SCHEMES**

The legislature's feud with schemes circumventing the anti-avoidance rules dealing with share buy-backs and dividend stripping continues. Dividend stripping occurs when a resident shareholder company (Company A) avoids taxes which may arise on the sale of its shares in a target company (Company B) by ensuring that Company B declares a dividend to Company A prior to the sale of its shares owned in Company B to a prospective purchaser. The current dividends tax regime allows for certain exemptions from dividends tax in respect of dividends paid to shareholders.

The current anti-dividend stripping rules will deem such a pre-sale dividend as an amount of income from the disposal of shares held by Company A in Company B provided:

- the pre-sale dividend was effectively funded by the prospective purchaser by way of a debt; and
- immediately before the sale, Company A held more than 50 per cent of the shares in Company B.

In July 2017, the legislature proposed certain amendments to the anti-avoidance rules. The proposed amendments will result in the anti-dividend stripping rules finding application if:

- the selling company is a South African resident;
- the selling company holds a "qualifying interest" in the target company (i.e. at least 50 per cent of the shares or voting rights; or should no other person hold the majority of the equity shares or voting rights, at least 20 per cent of the equity shares or voting rights; and
- any dividend is paid to the selling company within an 18-month period prior to the sale of the shares in the target company; or a dividend is paid to the selling company in consequence of the sale of the shares (irrespective of when the dividend was paid).

The Draft Taxation Laws Amendment Bill proposed that the amendments be effective in respect of disposals on or after 19 July 2017.

*Law & Laughter*