

# Tax Alert

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## Secondary tax on companies – an unexpected relief

Section 64B(5)(c) of the Income Tax Act currently permits a company that pays a dividend in anticipation or in the course of liquidation, winding-up, deregistration or the termination of the corporate existence of such company, and that complies with the formal requirements to secure the benefit, to claim exemption from STC in respect of

profits derived in years of assessment ending not later than 31 March 1993,

capital profits earned before 1 October 2001,

in the case of a company that had become a resident, realised and unrealised profits derived by the company before it became a resident.

### The 2007 amendment – the bad news

The section was amended in terms of section 59(1)(f) of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007), which was to take effect on 1 January 2009. The effect was to withdraw the benefits other than for pre-residence profits and limit the benefit to distributions in the course of liquidation, winding-up or deregistration.

The practical impact of the amendment was to drive companies wishing to benefit from the exemption to make distributions before 1 January 2009 and take steps to terminate the companies' existence as required by the Income Tax Act.

### Now for the good news!

Section 131 of the Revenue Laws Amendment Bill, 2008 repeals section 59(1)(f) of the Revenue Laws Amendment Act, 2007, with effect from 1 January 2009.

The position, as a result, is that companies that meet the requirements of section 64B(5)(c) will continue to be able to claim the benefits of the exemption for dividends declared on or after 1 January 2009. It appears that, once promulgated, this will remain the position until STC is abolished when the new Dividends Tax becomes effective. The Minister is obliged to give three months' notice in the *Gazette* of the intended introduction of the Dividends Tax.



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