Gordhan takes urgent steps against div tax schemes

By Evan Pickworth

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Finance Minister Pravin Gordhan on Friday invoked his right to take urgent steps against what he termed "significant tax avoidance schemes" in connection with the new dividends tax.

(Image: GCIS)

The dividends tax came into effect on April 1 this year at 15% to replace the former secondary tax on companies (STC), which had pushed company tax in SA above an international norm of around 30%.

However, Treasury and the South African Revenue Service (SARS) said a "growing number" of advisers were advocating a tax scheme for the benefit of foreign shareholders that arguably reduced the dividends tax rate to zero without any reliance on a tax treaty.

One of the alleged schemes involves a foreign shareholder selling the right to dividends to an independent SA company in exchange for the equivalent amount in foreign currency, less a fee.

"The stated purpose of the transaction is to convert the rand dividend amount to foreign currency, but the real purpose of the transaction is to eliminate dividends tax," said Treasury and SARS in a joint statement.

In terms of the urgent addition proposed to the 2012 Draft Taxation Laws Amendment Bills now being made, Treasury and SARS want the payment of the foreign currency equivalent amount to be viewed as a dividend for purposes of the dividends tax.

Therefore, in the above scheme, the independent SA company would be subject to the dividends tax, but with possible relief should the scope of a tax treaty cover the payment.

Treasury and SARS also propose that STC credits can no longer arise from dividends never previously subject to the STC.

"A small group of aggressive taxpayers have sought to exploit alleged defects in the transitional rules with the purpose of generating STC credits even though no STC was ever paid on the underlying profits," they said.

Public comments on the proposals have been requested by September 7.