

DIVIDEND CESSION AND DIVIDEND DISTRIBUTION: THE SOUTH AFRICAN VAT IMPLICATIONS

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Abstract

An intuitive approach when considering the VAT implications of a dividend cession, which relates to a share, could be to classify it as a financial service and thus exempt from VAT. The fact that debt factoring, another cession transaction, has been noted as an exempt supply could support the intuitive approach in favour of a financial service. Pursuant to different interpretations and in an attempt to triangulate evidence, the meaning of 'equity security', 'equity share' and 'security' from three different tax acts were considered. Findings suggest a dividend cession is not a financial service and consequently a taxable supply for VAT purposes. This finding supports the normal tax view of National Treasury that a dividend cession constitutes an income stream independent from the underlying share and thus ordinary revenue. Findings provide guidance on the value of supply provisions and also enunciate that the subsequent dividend distribution in specie could result in VAT implications.

Keywords

Dividend cession, financial service, equity share, equity security, VAT

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1. INTRODUCTION

The cession of a right to income has been part of South African tax law since as early as the 1940s (*Hiddingh v CIR*, 1940). In a generic dividend cession transaction three parties are involved: the cedent, cessionary and declaring company. The cedent is the person who was the initial beneficial owner of the dividend, who cedes such right. The cessionary is the person who receives the right to the dividend as a result of the cession and becomes the eventual beneficial owner. The declaring company is the company in which shares are held and which distributes the dividend ceded to the cessionary. The cessionary would, in a rational transaction, have to pay consideration in exchange for the right received from the cedent. The declaring company in such a transaction represents the company that issued equity which entitles the holder thereof to a dividend. For ease of reference the basic structure of a cession of the right to receive a dividend is illustrated in FIGURE 1 below.

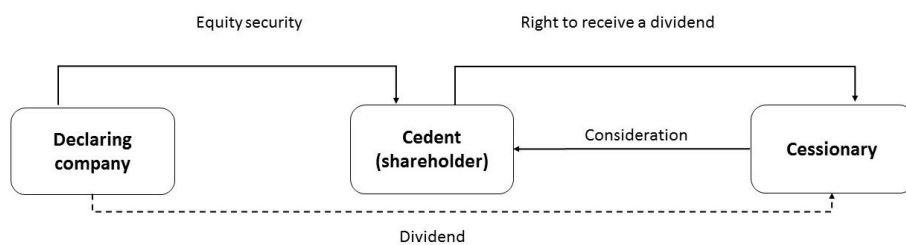


FIGURE 1: Basic structure of a cession of a right to receive a dividend

Source: Compiled by authors

Various anti-avoidance provisions and amendments have been made in the Securities Transfer Tax Act No. 25 of 2007 as well as the Income Tax Act No. 58 of 1962 in respect of dividend cessions. To assist taxpayers in the interpretation and application of the tax laws, the South African Revenue Service (SARS) drafts and issues several guides, including the Tax Guide for Share Owners (Issue 4), the Comprehensive Guide to Dividends Tax, and the Comprehensive Guide to Capital Gains Tax (SARS, 2014; SARS, 2015b). However, these guides contain only a brief reference to the capital gains tax implication of a cession of a dividend with a predominant focus on the dividends tax implications. There is no guidance in relation to the Value-Added Tax (VAT) implications of a dividend cession and as result taxpayers are left to their own interpretation. A possible intuitive approach could be to regard a dividend cession as similar to other cession transactions, such as debt factoring, which qualifies as a financial service and is therefore exempt from VAT (Botes & De Wet, 2011; Kilian & Nel, 2015). This article stems from the lack of guidance and the possible intuitive argument which has not been confirmed as correct, based on literature reviewed. The VAT implications of a dividend cession therefore requires investigation in an attempt to provide guidance on the implications in terms of the Value-Added Tax Act No. 89 of 1991 (hereinafter the Act) in South Africa.

For VAT implications to arise the requirements of 'supply' of 'goods' or 'services' in 'the furtherance of any enterprise' must be met. Section 1 of the Act contains a wide definition of 'supply', which has been held to mean any provision of goods or services, specifically including any sale agreement, in the course of the business of a taxpayer (Silver & Beneke, 2015:3.3). In respect of a dividend cession the right would be ceded in terms of an agreement between the cedent and cessionary which meets the requirement of a 'supply'. 'Goods' is defined by section 1

of the Act as any corporeal movable thing, fixed property or any real right in any such thing. A dividend cession is the result of rights being transferred, which are not corporeal, and would thus not constitute 'goods'. The section 1 of the Act definition of 'services' would apply in instances where 'goods' are not supplied and specifically includes the granting, assignment or cession of any right. Although 'services' specifically include the cession, granting or cancellation of a right, the broad scope was again affirmed in the case of *Stellenbosch Farmers' Winery Ltd v CSARS* (2012). The 'furtherance of any enterprise' requires that goods or services must be supplied for a 'consideration', thus that the supply should involve payment in any form. As a result of the requirements being met, a dividend cession at consideration, could qualify as the supply, by a vendor in the Republic of South Africa, of a service in the course or furtherance of an enterprise. Consequently, VAT will have to be levied at the standard rate unless the supply qualifies as a zero-rated supply or exempt supply. The uncertainty of interest highlighted in this article is the possible exemption of a dividend cession in terms of section 12(a) of the Act. Section 12(a) of the Act exempts any financial service from VAT and uncertainty exists as to whether a dividend cession could qualify as an equity security or the cession of a debt security, which are both specifically included as financial services.

2. RESEARCH OBJECTIVE AND METHOD

A lack of guidance on the VAT implications of a dividend cession merits an investigation to provide guidance for the declaring company, cedent and cessionary. The uncertainty in this regard has been created by the numerous amendments and no definitive guidance from SARS in respect of the VAT implications. The objective of the research on which this article is based was to investigate the VAT implications of a dividend cession and subsequent dividend distribution for the declaring company, cedent and cessionary involved in the cession. Findings of this research could contribute by providing guidance on the VAT implications of a dividend cession and could serve as a basis for future academic endeavours.

A historical method of research was chosen as the research methodology. A literature review was applied with the purpose of determining the VAT implications on each party affected by a dividend cession. Sources used include statutory laws, case law, interpretations and guides from SARS, academic articles, dissertations, academic books and non-academic articles and magazines by reputable law and audit firms. The following key words and combinations thereof were used in searching for relevant literature: 'tax', 'VAT', 'right', 'entitlement', 'cession', 'ceding', 'surrender', 'dividend', 'distribution' and 'future dividend'. Searches were mainly performed on SA e-Publications, LexisNexis Law Databases (South Africa), Jutastat – Law databases, National ETD, Google Scholar and the website of SARS.

VAT is an indirect tax on supplies and requires the separate consideration of each supply to a transaction to determine the VAT implications. A dividend cession is dependent on two other supplies: the initial issue or transfer of equity and the subsequent dividend distribution. The transfer of equity entitles the holder to a right to a declared dividend and is therefore considered a precondition before such right can be ceded. A dividend distribution establishes the right to the dividend being ceded and is considered a separate supply for VAT. Viviers (2015) notes that the VAT effect of dividends is no simple matter and that the circumstances under which these distributions are made should be carefully considered, as the incorrect interpretation could result in unforeseen VAT consequences.

The VAT implications of the following supplies were consequently investigated in order to conclude on the VAT implications of a cession in particular:

- Transfer of equity
- Dividend cession
- Dividend distribution

3. TRANSFER OF EQUITY

In cases of uncertainty and indefinite guidance a taxpayer could consult different sources in order to formulate an interpretation. The tax acts stipulating the requirements and definitions, and interpretation thereof, would form the foundation of such interpretation. In respect of the transfer of equity the meaning of 'equity security', 'equity share' and 'security' is considered to determine whether or not a dividend cession would be included in any of these meanings and as a result would follow the tax consequences attached to such meanings. In order to investigate different possible interpretations and in an attempt to triangulate evidence on whether or not a dividend cession could be construed as a 'financial service' the meaning of terms in the following different tax acts were considered:

- 'equity security' in terms of the Act
- 'equity share' in terms of the Income Tax Act
- 'security' in terms of the Security Transfer Tax Act

3.1 'Equity security' in terms of the Act

Section 2(1)(d) of the Act includes the issue, allotment or transfer of ownership of an 'equity security' as a financial service and as a result will be exempt from VAT in terms of section 12(a) of the Act. An 'equity security' is defined in section 2(2)(iv) of the Act as the interest in, or right to, share in the capital of a juristic person. *TCT Leisure (Pty) Ltd v CSARS* (2010) held that in order to establish whether a supply is that of an 'equity security', the company's articles and memorandum must be examined to identify the rights which form part of the bundle of incorporeal rights a share consists of. Such right is required to be explicitly included in statutory records and a mere commercial practice would not be sufficient for a right to be regarded as part of a share. A share certificate is a tangible document evidencing the legal relationship between a company and a shareholder, in terms of which a right to a dividend accrues to the shareholder when the dividend is declared (Cilliers, Benade, Henning, Du Plessis and Delport, 1992, cited in *De Leef Family Trust and Others v CIR*, 1993). Only once a dividend on a share is declared, payable on a certain date, an act is done which determines the amount of income derived from such share and the person to whom it will accrue (*CIR v King*, 1947). A right to dividend is thus established only once the dividend is declared and subject to the requirements of the Companies Act being met. Such a right to dividend is thus not submitted as a right that exists when the shareholder subscribes to a share in the company, but is created once declared by a company. The right to a dividend before declaration remains a conditional right (a *spes* or hope) to receive dividends. The view that a cession of a conditional right as well as a mere *spes* can be validly ceded has been confirmed in case law (*Van der Merwe*, 1998:362; *ITC 1378*, 1983). The fact that an unconditional right can validly be ceded is not contended – the argument is rather that, for tax purposes, such a conditional right would not constitute an 'equity share' if not specifically included according to

the statutory records of a company. If the statutory records did establish a right to dividend on date of subscription such right should also have been to share in the 'capital' of a juristic person. The wider accounting meaning of 'capital' would not be limited to share capital but would also include accumulated profits and consequently also include a right to dividends distributed from accumulated profits. However, the meaning ascribed in the context of section 2(1)(d) of the Act has been interpreted as limited to, in the context of companies, referring to company shares (Botes & De Wet, 2011; SARS, 2015a). The Deloitte VAT Handbook describes 'capital' as including an option on a share (Silver & Beneke, 2015:9.2.2). An option in a share would however not include a dividend cession. A dividend cession is thus not submitted as a share in the 'capital' of a juristic person and as a result would not constitute an 'equity security'.

Despite the statutory records not including a right to dividends, a share may be acquired including a dividend ('*cum dividend*' share) after initial subscription in the company. Shares are said to be '*cum dividend*' when acquired, including a right to a dividend which is about to be paid (between date of declaration and the last day to register). A share acquired '*cum dividend*' consequently includes a dividend cession as part of the acquisition costs. Such an acquisition is submitted as constituting two separate rights that are acquired. Firstly, a right in terms of the statutory records, which constitute an 'equity security', is acquired; this establishes a legal relationship between the company and the purchaser. Secondly, a right to receive a dividend not constituting an 'equity security' (as not provided in the statutory records of a company) and which establishes a legal relationship between the seller and the purchaser. *ITC 268* (1933) confirmed that an ordinary person might be inclined to think that the purchase of a share *cum* rights constitutes a capital asset (meaning the whole amount of the shares regarded as capital plus the dividends accruing or still to be declared), but confirmed that the income tax law differs from the thinking of an ordinary man and such rights would be considered separately (*ITC 268*, 1933). The portion attributable to the dividend cession would thus still not be regarded as an 'equity security' even if acquired as a '*cum dividend*' share.

Based on the above, a dividend cession is not submitted as an 'equity security' unless specifically included in the statutory records of a company. The term 'security' is, however, construed to include both equity and debt instruments and could also possibly be interpreted as a financial service and consequently an exempt supply contemplated in section 12(a). An alternative point for investigation is therefore the meaning of 'equity share' and 'security' to determine whether a dividend cession could possibly be construed as included in either of these meanings.

3.2 'Equity share' in terms of the Income Tax Act

An equity share has been described as a bundle or conglomerate of personal rights (*Standard Bank of South Africa Ltd and Others*, 1983:151). Section 1 of the Income Tax Act (South Africa, 1962) defines an 'equity share' as any share in a company not limited in participating in dividends nor returns of capital beyond a specified amount in a distribution. If both the right to dividends and the right to the capital are restricted, a share ceases to be an equity share (Edward Nathan Sonnenbergs, 2011). A share is defined in Interpretation Note 43 as, in relation to any company, any share or similar equity interest in that company. A member's interest in a close corporation comprises a 'similar equity interest' to a share for the purposes of the above definition (SARS, 2012). With reference to an ordinary share an equity share grants only the holder thereof a right to participate, which right is again submitted as a conditional right (*spes* or hope) and not an absolute right which is granted on subscription. Preference shares have also been held as equity shares, but only if their right to participate is not limited (Lewis, 2013).

A dividend cession can therefore also not be interpreted as an 'equity share', as an 'equity share' merely grants the holder a right to participate, a conditional right similar to what was held in the preceding discussion in section 3.1. Owing to the interpretation that 'security' has a broader meaning than 'equity' (as it would also include debt), the meaning of 'security' in terms of the Securities Transfer Tax Act was investigated to conclude whether this meaning might be interpreted as including a dividend cession.

3.3 'Security' in terms of the Securities Transfer Tax Act

The Securities Transfer Tax Act (South Africa, 2007) previously defined a 'security' to specifically include any right or entitlement to receive any distribution from a company or close corporation. This inclusion was subsequently removed effective from 1 April 2012 and according to the explanatory memorandum of the National Treasury (2011:172) a dividend cession would no longer be subject to Securities Transfer Tax, as a receipt of a dividend acquired by way of a cession is viewed as an income stream independent of the underlying share. Although the term 'security' can be interpreted to have a wider meaning than mere equity, as it could also include debt, it is not submitted as including a right to a dividend from 1 April 2012.

Based on the three meanings considered on interpretation from three different tax acts, it is submitted that a dividend cession is not an 'equity security' or 'equity share'. Although a 'security' previously included a right to a dividend this exclusion was removed effective as from 1 April 2012. A dividend cession does thus not constitute a financial service and is consequently not an exempt supply in terms of section 12(a) of the Act.

4. DIVIDEND CESSION

Based on the submission that a dividend cession is not an exempt supply, the VAT implications were investigated in an attempt to provide guidance. The cession arrangement would be regarded as a supply between the cedent and the cessionary – therefore would not involve the declaring company. A dividend cession was therefore investigated from the position of the cedent and cessionary involved in the cession (FIGURE 1).

4.1 Position of the cedent

Specifically included in section 1 of the Act as a supply is the performance in terms of a sale agreement. Since a cession can take place upon mere agreement between the parties (see *Lynn & Main Inc v Brits Community Sandworks CC*, 2008), this agreement and performance in terms thereof would qualify as a supply. A cession is also specifically included in the definition of 'services' in section 1 of the Act and accordingly the cession of any right will constitute services as defined. The dividend cession would therefore be a supply of services and it is contemplated that such cessions could constitute an activity that happens frequently and without interruption for a consideration. This supply will be subject to a liability for output tax at the standard rate, unless an exemption applies.

The exemption applicable to the transfer of an equity security in terms of section 12(a) of the Act must be considered. As indicated, it was held in *Standard Bank of South Africa Ltd and Another v Ocean Commodities Inc and Others* (1983:151) that a share constitutes a bundle or conglomerate of personal rights, which entitles the holder thereof to an interest in the company, its assets and

dividends. However, an equity security for purposes of section 2 of the Act refers only to the capital of the company. The dividend cession consequently does not result in the issue, allotment or transfer of ownership in an equity security and is not the supply of financial services. In contrast with the transfer of an equity security, a dividend cession would constitute a taxable supply of services and consequently a liability for output tax for the cedent will arise.

4.2 Position of the cessionary

If the cedent has to account for a liability for output tax on the dividend cession the cessionary would acquire services upon which VAT was charged. As stated in the VAT 404 Guide for Vendors, where a vendor acquires goods or services to be used in conducting its business, the VAT charged will qualify to be claimed as an input tax deduction (SARS, 2015a:44). 'Input tax' is defined in section 1 of the Act to mean the tax charged under section 7 of the Act that is payable by a supplier on the supply of goods or services made by that supplier to the vendor and acquired by the vendor wholly for purposes of consumption, use or supply in the course of making taxable supplies.

In the case where the cedent accounted for the liability for output tax on the cession, a cessionary could be entitled to an input tax deduction if the dividend cession is acquired for purposes of consumption, use or supply in the course of making taxable supplies. The cessionary could use the right to receive a dividend to either cede that right further, in which case it will become the cedent, or it could remain the holder of that right and will therefore receive dividends. In the case where the dividend is further ceded by the cessionary, it will be making taxable supplies and the cessionary will be entitled to an input tax deduction in terms of section 16(3) of the Act. Where the cessionary remains the holder of the right and subsequently receives a dividend, it must be considered whether the cessionary has made a taxable supply. The receipt of a dividend, in cash or otherwise, will not amount to the provision of goods or services by the cessionary. Consequently the receipt will not be regarded as in the furtherance of any enterprise of the cessionary for taxable supplies. A cessionary would thus not be able to claim input tax on consideration incurred to acquire the right to a dividend.

The findings of the VAT implications of a dividend cession are submitted in TABLE 1.

TABLE 1: Summary of VAT implications of a dividend cession

Declaring company
None, as declaring company is not involved in the cession of dividend.
Cedent
Where the cedent is a vendor, the dividend cession could result in the supply of services in the course and furtherance of an enterprise, for a consideration, which would be subject to a liability for output tax at the standard rate.
Cessionary
Where the cessionary acquires the right to receive a dividend and subsequently receives that dividend, the cessionary does not utilise the right to receive a dividend in the course of making taxable supplies and no input tax deduction will be allowed.

Source: Authors' compilation

The VAT implications in respect of the dividend distribution subsequent to the dividend cession are discussed next. Dividends can be declared to be paid in cash, or in a form other than cash (a so-called 'dividend *in specie*'). The VAT implications in respect of a dividend distribution in cash or otherwise are investigated below. Despite the cedent being a party to the dividend cession (FIGURE 1) the dividend distribution would not involve the cedent and therefore no VAT implications would arise for the cedent. The declaring company would have a supply to the cessionary and the position of both is discussed in the following section.

5. DIVIDEND DISTRIBUTION IN CASH

5.1 Position of the declaring company

In view of the wide definition of 'supply' in section 1 of the Act, the distribution of a cash dividend could be a supply for VAT purposes. Such a supply should then be of 'goods' or 'services' to be subjected to VAT. The definitions of both 'goods' and 'services' specifically exclude money and consequently a distribution of cash will not be subject to the provisions of the Act. In *CSARS v British Airways Plc* (2005:13) it was confirmed that section 7 of the Act levies tax on the supplies of services and not merely on the receipt of money that arises from the supply of a service. For a dividend in cash no liability for output tax will therefore arise, as the dividend takes the form of a payment of money, which is not a taxable supply for purposes of the Act. KPMG (1997) argued, in the alternative, that a cash dividend could be a 'service' in section 1 of the Act, but that the shareholder receiving a cash dividend does not provide anything in order to receive that cash dividend. The supply is therefore at no 'consideration' and consequently not an 'enterprise', resulting in no taxable supply.

It follows that, irrespective of which of the above two alternative arguments are accepted, a dividend in cash will not constitute a taxable supply for VAT purposes. Where a dividend takes the form of a dividend *in specie* the VAT implications must be reconsidered, as the supply would no longer constitute a supply of money.

5.2 Position of the cessionary

The supply of cash to the cessionary would not result in 'input tax' for the cessionary, as the declaring company would not be liable for any output tax in respect of the supply.

6. DIVIDEND DISTRIBUTION *IN SPECIE*

6.1 Position of the declaring company

The supply of a dividend *in specie* could constitute the supply of 'goods' or 'services'. If an asset is transferred to the cessionary it would constitute 'goods'. The declaring company could, however, also render services for the benefit of the cessionary, in which case a 'service' would be supplied. The supply of 'goods' by the declaring company could potentially be subject to a liability for output tax at the standard rate in terms of section 7 of the Act if the supply was in the course or furtherance of an enterprise.

The value of a supply will be affected by the provisions of the Act pertaining to connected persons, change in use and when a supply occurs at no consideration. The provisions of section 10(23) of

the Act relate to a supply at no consideration and determine that if a supply is at no consideration the value of the supply would also be at no consideration. This application of this section is subordinate to the other provisions in section 10 of the Act, as it reads: 'Save as otherwise provided in this section'. A supply at no consideration if established specifically in section 10 of the Act would therefore apply over the general provision contained in section 10(23) of the Act. Viviers (2015) also submitted that a dividend *in specie* would constitute a supply for no consideration subject to the anti-avoidance provisions relating to connected persons. A supply between connected persons could result in the application of section 10(4) of the Act, which deems a supply to take place at market value, not at no consideration, and is consequently subject to liability for output tax at the standard rate as determined by section 7 of the Act. For purposes of the Act a connected person is defined in section 1 and includes when there is a shareholding of at least 10% between persons as well as natural persons related within the third degree of consanguinity.

The provision contained in section 18(1) of the Act, which is applicable where goods were acquired for use in the course and furtherance of an enterprise of a vendor, but are subsequently used to make exempt or non-taxable supplies, must be considered. It would appear that a vendor who acquires goods to use in the course and furtherance of his enterprise, and who subsequently distributes those goods to shareholders who are not connected persons to that vendor, as a dividend *in specie*, could incur a change in use and section 18(1) of the Act would result in the value of the supply being deemed at market value in terms of 10(7) of the Act, resulting in a liability for output tax to arise. The provisions of section 18(1) would however not apply if input tax was denied on acquisition of the asset (which is distributed as dividend *in specie*) in terms of section 17. In the context of a dividend *in specie* it would entail that if the declaring company on acquisition of the asset would have been denied a claim for input tax there would be no output tax in terms of section 18(1) on the subsequent distribution of the asset *in specie*. As the value of the supply is provided for specifically in section 10(7) of the Act, the provisions of section 10(23), at no consideration, would not apply. The precedence of section 10(7) over section 10(23) clarifies the initial mismatch noted by Viviers (2015). If the provisions of section 18(1) (read with 10(7)) thus applied, it could result in a supply at market value even if no consideration was charged by the supplier.

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The application of sections 10(4) and 10(7) of the Act would result in the value of the supply at market value. Based on interpretation of the wording of the Act the sequence in which sections 10(4) and 10(7) should be considered is not prescribed.

As both provisions result in a value of supply at market value, the sequence of consideration is not submitted as imperative. As the provisions of section 10(4) relating to connected persons is an anti-avoidance measure, it is proposed as a first consideration before subjecting a transaction to section 10(7). Furthermore, both these provisions will take precedence over the general rule of no consideration contained in section 10(23) of the Act. Based on the investigation performed and the inferences, guidance on the determination of the value of a supply of a dividend *in specie* is submitted in FIGURE 2.

In conclusion, the declaring company would be subject to VAT on a dividend *in specie* if the shareholder is a connected person or the change in use provisions apply. The position of the cessionary, the recipient of the dividend, is subsequently discussed.

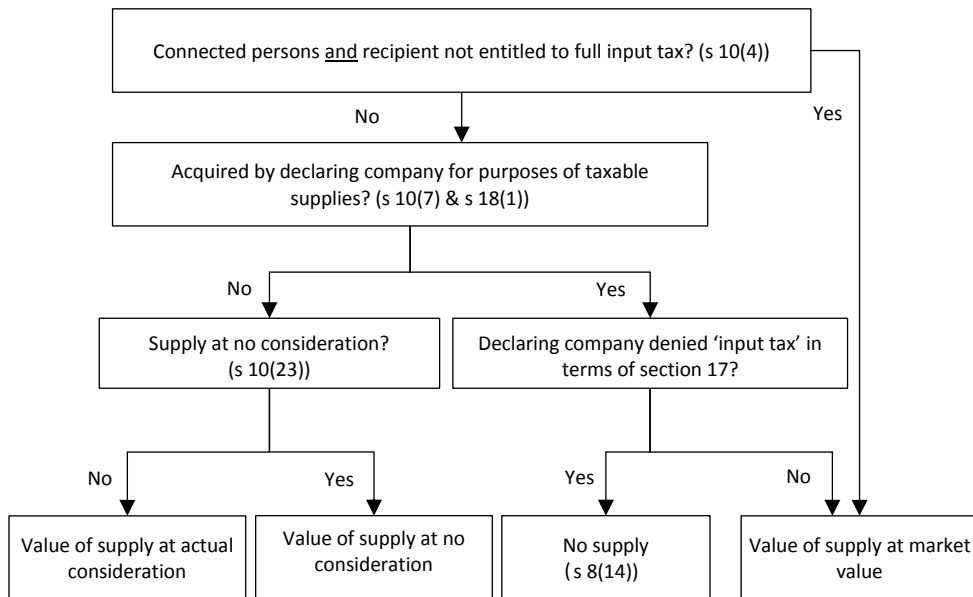


FIGURE 2: Value of supply decision tree

Source: Compiled by authors

6.2 Position of the cessionary

If the declaring company is liable for output tax the cessionary would be entitled to an ‘input tax’ deduction as defined in terms of section 16 of the Act. The cessionary would be entitled to an ‘input tax’ deduction only if the dividend *in specie* acquired is applied in the making of taxable supplies. A further precondition to this ‘input tax’ claim would be that the declaring company should have issued a tax invoice in respect of such a supply, as required by section 16(2)(a).

The findings of the VAT implications of a dividend distribution are submitted in TABLE 2.

TABLE 2: VAT implications dividend distribution

Dividend distribution in cash	Dividend distribution <i>in specie</i>
Declaring company	
No taxable supply and therefore no liability for output tax	Could result in a taxable supply where the asset that is declared was used in the course and furtherance of an enterprise by the declaring company
Cessionary	
No input tax deduction allowed as no output tax levied by declaring company	Input tax deduction allowed if output tax levied by declaring company and applied ‘goods’ or ‘services’ received <i>in specie</i> for the purpose of making taxable supplies

Source: Compiled by authors

7. CONCLUSION

An intuitive approach when considering the VAT implications of a dividend cession might be to regard it as a financial service and thus exempt from VAT as it relates to a share. Pursuant of different interpretations and in an attempt to triangulate evidence on whether a dividend cession could be construed as a 'financial service' the meaning in three different tax acts were considered. Findings suggested that none of the tax acts considered affords possible interpretation for the inclusion of a dividend cession as 'equity security', 'equity share' or 'security'. Counter-intuitive findings submitted that a dividend cession is not a 'financial service' and thus not an exempt supply.

An investigation of the VAT implications of the subsequent dividend distribution (both a dividend in cash and a dividend *in specie*) was also performed. A cash dividend would not have any VAT implications, as the supply of cash is excluded from the definition of goods and services. The distribution of a dividend *in specie* is complicated by the different value of supply provisions and the sequence of consideration of the different provisions. The findings indicate that the declaring company would be subject to VAT on a dividend *in specie* if the shareholder is a connected person or the change in use provisions apply. Expanding on the evidence from Viviers (2015) and KPMG (1997), the findings of this investigation show evidence of the sequence of consideration of the different value of supply provisions. Guidance was formulated in a decision tree in FIGURE 2.

In summary, the VAT implication of a dividend cession for the different parties, on the assumption that all such parties are VAT vendors, is submitted to be as follows:

- The cedent would be liable for output tax in respect of consideration received for the dividend cession.
- The cessionary would not qualify for an input tax deduction in respect of the dividend cession unless the right to receive a dividend is applied in the course and furtherance of an enterprise. In respect of the subsequent dividend declaration the cessionary would be able to claim input tax only if the declaring company levied output tax and issued a tax invoice to the cessionary.
- The declaring company was considered and it was found that only in the case of a dividend *in specie* (where the asset distributed was used in the course and furtherance of an enterprise) could the declaring company possibly have to account for output tax.

National Treasury (2011:172) explained that a cession of a dividend would no longer be subject to Securities Transfer Tax from 1 April 2012, as a receipt of a dividend acquired by way of a cession is viewed as an income stream that is independent from the underlying share and as such will be treated as ordinary revenue. Furthermore, the Income Tax Act also contains specific anti-avoidance provisions in section 10(1)(k)(i)(ee) in terms of which the dividend exemption will be lost only where the taxpayer receives or accrues dividends in consequence of a cession without acquiring the underlying share (National Treasury, 2012). In similar vein it is submitted that a dividend cession is independent from the underlying issuing of the share, an exempt financial service, and therefore subject to VAT.

The recommendation is that in order to provide guidance on this matter the Tax Guide for Share Owners be updated to include reference to such possible VAT implications so as to assist share owners in their overall tax compliance due to the incorrect intuitive approach, which might be to consider a dividend as an exempt supply.

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