Guidance [redacted] Dividends?

1. Introduction

This guidance note is a ba[redacted] what they are, how they are paid and the paperwork involv[redacted]ess wishes to make a dividend payment.

This guidance note focuse[redacted]ared by SME private companies in respect of ordinary shares[redacted]ded a short paragraph introducing dividends in specie at the [redacted] for those considering this type of “dividend in kind”. This is h[redacted]and specific legal (and tax) advice may be needed.

Dividends declared by pu[redacted] rate dividends as they relate to preference shares are b[redacted]s note. In addition whilst many businesses in fact opt f[redacted]structure specifically for the tax advantages available by p[redacted]dividends, this is also beyond the scope of this guidance not[redacted]mended that specialist accounting and tax advice is sought a[redacted]ent of dividends.

Tax credit changes from 6^{th}[redacted]sequent adjustment to the dividend tax allowance from 6^{th} A[redacted]ntly 6^{th} April 2023) and dividend vouchers are discussed b[redacted]ly in the context of the paperwork required for the payment o[redacted]mation can be found on the HMRC website, www.hmrc.gov.uk[redacted]

2. What are dividends?

A dividend is a distribution [redacted]profits made to its shareholders. If a company has made a pr[redacted]these funds to its shareholders. In broad terms this profit is the[redacted]eft over after paying all its business expenses and liabilities, in[redacted]efore a company can legally pay a dividend, it must have suffi[redacted]. The law regarding distributions is governed by Part 23 of the[redacted]

Dividends can either be fin[redacted]

<u>Final Dividends</u>

A final dividend is paid o[redacted]ter a company’s annual accounts have been drawn up so th[redacted]at its financial performance is and therefore what, if any, divi[redacted]How dividends are recommended and declared is set out in[redacted] association. The Companies Act 2006 does not specify wh[redacted]and does not require dividends to be declared by sharehold[redacted]

However, unless a private [redacted]et out a procedure in its articles as to the process for recomm[redacted]dends or is silent on the point, it is generally accepted practi[redacted]can resolve to recommend final dividends, the dividend sho [redacted] eholders at a general meeting or by way of written resolution. [redacted] case for companies with private company model articles of [redacted]) and (2) state:

(1) "The company may by [redacted] e dividends, and the directors may decide to pay interim d [redacted]

(2) A dividend must n [redacted] the directors have made a recommendation as to [redacted] dend must not exceed the amount recommended by the d [redacted]

For companies where m [redacted] idend, they cannot vote to pay themselves a final divid [redacted] mount that the directors have recommended but can dec [redacted]

However, note that some [redacted] will choose to amend their articles to dispense with the need [redacted] ed by shareholders.

A final dividend is a debt p [redacted] rs once approved.

<u>Interim Dividends</u>

Interim dividends can be pa [redacted] the year and are calculated *before* the company's annual acco [redacted] ing before the company's financial performance is determined [redacted] sually decided solely by the board of directors (recommended [redacted] ributed either quarterly or after six months. There are no rul [redacted] v often dividends are distributed, however from a practical [redacted], quarterly or every six months is considered easier for reco [redacted] idend only becomes a debt once it is actually paid rather than [redacted] board has the ability to rescind its resolution to pay an interi [redacted] p to the time of actual payment of the dividend.

3. **Declaring and paying div** [redacted]

As stated above, any pr [redacted] ividend will involve checking the company's articles of asso [redacted] considering whether it is a final or interim dividend and whet [redacted] nmodified private company model articles with article 30 in pl [redacted]

Articles may contain restri [redacted] f dividends or contain a particular mechanism for the paymen [redacted]

The model articles provide [redacted] distributed according to the number of shares held. Therefore i [redacted] the company's shares, he/she will receive 50% of each divide [redacted]

When recommending or [redacted] ectors must have regard to their common law and statutory [redacted] anies Act 2006. In particular they must have regard to s.17 [redacted] vers), s.172 (duty to promote the success of the company) [redacted] ercise reasonable care, skill and diligence). Directors shoul [redacted] lvency legislation as they may be liable under s.238 of the Ins [redacted] e time of the payment the company was insolvent or the comp [redacted] es insolvent.

4. **Board Meeting and Share**[redacted]**olution**

What type of board meeting [redacted] vate company will depend on what type of dividend is being [redacted] l) and whether the articles of the company enable the direct[redacted] and declare the dividend or require the declaration to be made[redacted]

You will find we have [redacted] board meeting minutes for the recommendation and decla[redacted] Simply-Docs folder of documents relating to dividends. The fi[redacted] the directors both recommending and declaring the dividend.[redacted] olves the directors recommending the payment of a dividend,[redacted] nent to allow the dividend to be put to the shareholders for th[redacted] written resolution or in a general meeting) and declaration. [redacted] epend on a review of the relevant company's articles. For co[redacted] ders must declare a final dividend, a shareholders' ordinary r[redacted] to be passed. This will usually be done by way of written reso[redacted] emplates also includes the wording required to pass the neces[redacted] whether by written resolution or in general meeting.

Board minutes must be ke[redacted] general records and also in case they are required by HMR[redacted] idend was properly recommended and declared.

5. **Dividend vouchers**

Each shareholder must b[redacted] her by the company. A dividend voucher is a written recor[redacted] ed the dividend, how much it was and what shares the divide[redacted] ke a formal receipt and provides a record of the dividend. Son[redacted] er will be sent to a bank or building society if the dividend is to [redacted] ilding society account. You will find template dividend vouche[redacted] folder of documents relating to dividends.

The rationale behind a div[redacted] hareholders must pay tax on any dividends they receive fro[redacted] tax year via the self-assessment process.

Prior to 6th April 2016, a[redacted] holders dividends out of profits on which they had already pa[redacted] tax credit recorded in the dividend voucher to be credited aga[redacted] x credit took account of the tax the company had paid and wa[redacted] older to offset against any income tax that was due on their d[redacted]

The dividend the shareho[redacted] ed 90% of their 'dividend income'. The remaining 10% of the [redacted] ade up of a tax credit. Put another way, the tax credit represe[redacted] income. A simple example would be:

A company wants to pay a[redacted] £900 by 9, which give a dividend tax credit of £100. Pay £90[redacted] add the £100 tax credit and record a total of £1,000 on the div[redacted]

From 6th April 2016, the [redacted] bolished and replaced by a £5,000 tax-free **dividend allowan**[redacted] ividuals from this date did not have to pay tax on the first £5,[redacted]ome, no matter what non-dividend income they have as the [redacted] amount of a taxpayer's dividend income from income tax.

From **6th April 2018**, whils[redacted]dend allowance remained in place, changes made in the Spri[redacted]at the dividend tax free allowance was **£2,000** rather than £5[redacted]8/19.

Note that from **6th April 2**[redacted]nce for dividend income has been reduced from £2,000 to £1[redacted]ther to £500 from **6th April 2024**.

Dividend income more th[redacted]e is taxed at the following rates (applicable from 6th April 2[redacted]

- 8.75% on dividend [redacted]rate band;
- 33.75% on dividen[redacted]r rate band; and
- 39.35% on dividen[redacted]ional rate band.
- Before 6th April 202[redacted], 32.5% and 38.1% respectively.

There is much more detaile[redacted]HMRC's website as well as worked examples of how the divide[redacted]

Taxable dividend income e[redacted]vidend income from assets held in ISAs, which continue to be[redacted]

Note however that the ze[redacted]reduce a taxpayer's total taxable income and the dividend a[redacted]ed for dividends.

The dividend voucher will [redacted]er. However, an electronic voucher (i.e., one attached to an [redacted]generated by accounting software packages) is as acceptab[redacted] provided the shareholders have previously agreed to this.

The voucher should state:[redacted]

- Company name;
- Name and address[redacted]
- Total shareholding[redacted]
- Amount of dividend[redacted]
- Date of the paymen[redacted]
- Company signature[redacted]

This paperwork *must* be p[redacted]MRC can require it to be produced as evidence that it was d[redacted] shareholder received and that a dividend was properly decl[redacted]

6. Waiver

A shareholder is entitled t[redacted]idend. Although not that common, small business owners ca[redacted]ghts to dividends in order to retain money in the business.

Only a shareholder can w[redacted] dividend and a company cannot waive a dividend on behalf[redacted]untarily exclude a shareholder from a dividend payment. If th[redacted]ay different dividend amounts to different shareholders, it [redacted] classes of shares with different dividend rights. See our [su[redacted]sification].

A waiver may cover a sing[redacted]f dividends within a specified time period. The waiver should [redacted] dividend is being waived and that there is a genuine commer[redacted]abling the company to retain funds for a specific purpose. This[redacted]as regards demonstrating to HMRC that the waiver is not co[redacted]ng or diverting otherwise taxable income. As stated above, t[redacted]dividends are beyond the scope of this guidance note, howeve[redacted]sidered it may be sensible to seek specialist tax advice on se[redacted]order not to fall foul of the Income Tax (Trading & Other Inco[redacted]

A waiver must be a formal [redacted]st be signed, dated, witnessed and sent to the company. The [redacted]ceived by the company before the right to the dividend arises.[redacted]idend must be waived before it has been paid and a final divid[redacted]re it has been approved.

You will find a template dee[redacted]-Docs folder of documents relating to dividends.

7. **Dividends in Specie**

An alternative to a distribut[redacted]on of a particular asset (or assets) to shareholders. This trans[redacted]n kind" or a "dividend in specie". It usually involves the transfe[redacted]perty, an investment or equipment. A company may wish to tr[redacted]eir shareholders instead of, or, as well as a cash asset. Divid[redacted] used in conjunction with an intra-group reorganisation. A co[redacted]re a dividend of a specified amount which it will then satisfy b[redacted] assets of equivalent value to its shareholders.

A company must ensure th[redacted]thority to pay a dividend in specie and in the absence of an [redacted]pany must pay dividends in cash. ***Article 34 of the model ar[redacted]nies allows non-cash dividends to be paid subject to sha[redacted]rdinary resolution***. As with cash dividends, paying a divide[redacted]o the provisions of Part 23 of the Companies Act 2006, com[redacted]duciary duties. The most important common law rule is that a [redacted] make a distribution out of capital. Directors must also cons[redacted]any will be solvent following the proposed distribution. They[redacted]e immediate cash flow implications of the distribution and the c[redacted]ompany to pay its debts as they fall due. Additional thought nee[redacted]ue of the asset being distributed to ensure that a company doe[redacted] at an undervalue. In addition, if as a result of the distribution[redacted] shareholder will assume certain obligations relating to the [redacted]ry for the company to enter into a separate agreement with th[redacted] that those liabilities are effectively transferred. Specific advice[redacted] in relation to this.

There may also be **tax iss**[redacted]

The main question in relati[redacted]is whether **SDLT** is payable on the transfer of the property? Th[redacted] there is chargeable consideration. If the consideration is for m[redacted]for example where a dividend in a cash amount is declared a [redacted] atisfied in specie, a debt may have been created and HMRC [redacted] SDLT to be paid on the transfer. Transfers of assets betwee [redacted] unlikely to attract SDLT as section 42 of the Finance Act 1 [redacted] tamp duty for transfers between associated companies. A [redacted] from HMRC or a specialist tax adviser.

A dividend in specie may [redacted] pply of goods for **VAT** purposes if the company is disposing [redacted] portant that specialist tax advice is sought in relation to this.

You will find a template fo [redacted] t a general meeting of a company relating to the declaration [redacted] be satisfied otherwise than in cash in the Simply-Docs folder [redacted] dividends. We also have a set of board minutes for the decl [redacted] company of a specified amount to be satisfied by transferring [redacted] quivalent value to its shareholders.