

# TAX AND EXCHANGE CONTROL ALERT

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### SOUTH AFRICANS WORKING AND LIVING ABROAD – THE EXCON CONSIDERATIONS

Over the past few months, the taxation of foreign employment income earned by South African residents and the proposal by National Treasury to repeal the provision that exempted such income from the payment of tax, has drawn a lot of attention. Most recently, Treasury indicated that it would no longer propose a repeal of this provision, but would instead propose, among other things, that the first R1 million in foreign employment income received by or that accrues to a South African resident, should still be exempt.

### CUSTOMS AND EXCISE HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment since our last instalment.

# SOUTH AFRICANS WORKING AND LIVING ABROAD – THE EXCON CONSIDERATIONS

*In terms of the Exchange Control Regulations, 1961 read with the Currency and Exchanges Manual for Authorised Dealers, where a South African person who is a resident for Excon purposes works abroad, there are specific rules that apply.*

*The SDA comprises an amount of R1 million per calendar year, which any resident who is 18 years or older may use for any legal purpose abroad, without obtaining a tax clearance certificate.*

Over the past few months, the taxation of foreign employment income earned by South African residents and the proposal by National Treasury (Treasury) to repeal the provision that exempted such income from the payment of tax, has drawn a lot of attention. Most recently, Treasury indicated that it would no longer propose a repeal of this provision, but would instead propose, among other things, that the first R1 million in foreign employment income received by or that accrues to a South African resident, should still be exempt.

Despite some people not being aware of it, an important issue to consider in this regard is the exchange control (Excon) laws that apply to such persons. In terms of the Exchange Control Regulations, 1961 (Regulations) read with the Currency and Exchanges Manual for Authorised Dealers (AD Manual), where a South African person who is a resident for Excon purposes works abroad, there are specific rules that apply. Section B.4(G) of the AD Manual, dealing with "residents temporarily abroad", is of particular importance in this regard.

## **General provisions pertaining to residents temporarily abroad**

Section B.4(G) sets out the manner in which a resident temporarily abroad may make use of their South African sourced funds abroad for purposes of subsistence and the requirements to be met by such persons where they wish to temporarily export certain personal effects and other assets.

Firstly, such persons may make use of their R1 million single discretionary allowance (SDA) and of the R10 million foreign investment allowance (FIA) per calendar year without returning to South Africa. The SDA comprises an amount of R1 million per calendar year, which any resident who is 18 years or older may use for any legal purpose abroad, without obtaining a tax clearance certificate. For example, the SDA may be used for investment purposes or to send gifts to persons abroad, but may

not be used to export gold or jewellery.

It should be noted that there are also other rules that apply to the use of the SDA. In order to make use of one's FIA and transfer an additional amount of R10 million abroad in a calendar year, persons have to meet the requirements contained in sB.2(B) of the AD Manual, which states, among other things, that persons must have a tax clearance certificate issued by SARS.

Furthermore, residents temporarily abroad may use their local debit and/or credit cards within the SDA limit. However, it is important that persons do not exceed the R1 million limit permitted by the SDA or the R10 million limit, where persons have been granted permission to make use of their FIA. In other words, if persons transfer South African funds abroad by making use of their SDA and they use those funds for various purposes, including the purchase of goods with their credit or debit card, they must ensure that the total amount transferred abroad does not exceed R1 million, as this would constitute a contravention of the Regulations, read with the AD Manual.

Residents temporarily abroad may also receive pension and retirement annuities as mentioned in sB.3(A)(ii) of the AD Manual as well as monetary gifts and loans as mentioned in sB(4)(A)(x), which deals with the rules regarding the use of the SDA. However, no other foreign currency

# SOUTH AFRICANS WORKING AND LIVING ABROAD – THE EXCON CONSIDERATIONS

CONTINUED

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may be availed of without the specific prior written approval of the Financial Surveillance Department of the South African Reserve Bank (FinSurv).

From a procedural perspective, if persons make use of a general or special power of attorney to facilitate transfers in terms of their SDA or FIA, a certified copy of the person's valid green barcoded identity document or Smart identity document card must accompany the power of attorney.

#### **Other considerations – foreign earned income**

Residents temporarily abroad should also take into account that where they earn income on approved foreign assets or in respect of services rendered to non-residents while physically abroad, such income constitutes foreign earned income in terms of sB.17(A) of the AD Manual. Such foreign earned income, which can take the form of a salary paid to the persons in foreign currency, may be used abroad without being declared to FinSurv and is not subject to the provisions of Regulation 6. These provisions state that persons must repatriate any foreign currency that they become entitled to, within 30 days of becoming entitled to such foreign currency. It is important to note that in the context of foreign employment income, the services must be rendered while the

person is physically abroad. Where the person is physically in South Africa when rendering the services to the foreign employer, the remuneration received for such services would not constitute foreign earned income within the context of sB.17(A). If such remuneration is paid to the person in foreign currency, it must be repatriated to South Africa within 30 days in terms of Regulation 6. Failure to do so would mean that such remuneration constitutes an unauthorised asset and a person would most likely have to pay a levy to regularise such asset at a later stage.

It is also important to note that foreign earned income within the context of sB.17(A) of the AD Manual may not be disposed of to other South African residents, whether settlement takes place in rand or foreign currency, without the specific prior written approval of FinSurv. Such funds may also not be used to create a loop structure.

#### **Comment**

Any persons deciding to work abroad, should consider not only the tax implications of any foreign employment income received, but ensure that their use of foreign and South African sourced funds does not contravene South Africa's Excon laws.

*Louis Botha*

## **Who's Who Legal**

Emil Brincker has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory and Who's Who Legal: Corporate Tax – Controversy for 2017.

Mark Linington has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory for 2017.

# CUSTOMS AND EXCISE HIGHLIGHTS

*Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.*

*In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.*



## **This week's selected highlights in the Customs and Excise environment since our last instalment.**

1. Amendments to the Rules to the Customs & Excise Act, No 91 of 1964 (Act) (certain sections quoted from the SARS website):

1.1 For the purposes of consistency with the latest developments in respect of the introduction and substitution of the new and old trade agreements, the rules to the following trade agreements were amended (and forms DA185.4A2 and DA185.4A):

1.1.1 The African Growth and Opportunity Act (AGOA);

1.1.2 Economic Partnership Agreement between the SADC EPA states, of the one part, and the European Union and its member states, of the other part (SADC/EPA);

1.1.3 Generalized System of Preferences (GSP) European Union, Norway, Turkey and the Russian Federation; and

1.1.4 Preferential Trade Agreement between the Common Market of the South (MERCOSUR) and the Southern African Customs Union (SACU).

The Registered Exporter System (REX system) is the new system of certification of origin of goods which is based on a principle of self-certification on statements on origin. The REX system does not impact the rules for determining the origin of goods.

Due date for comments: 4 October 2017.

Comments to:

[C&E\\_LegislativeComments@sars.gov.za](mailto:C&E_LegislativeComments@sars.gov.za).

2. Amendments of Schedule 1 Part 1 to the Act (certain sections quoted from the SARS website):

2.1 Draft amendment to the 2018 Economic Partnership Agreement phase-downs as well as various technical amendments with effect from 1 January 2018. Due date for comments: 13 October 2017 ([mmaphosa@sars.gov.za](mailto:mmaphosa@sars.gov.za)). Draft amendments as follows:

2.1.1 The phase-down of duties in terms of EPA for 2018 relates to fish classifiable in tariff subheadings 0302.13, 0302.14, 0303.14 and 0305.41, fish in Chapters 3 and 16 and industrial products classifiable in tariff subheadings 6103.43.10, 6103.43.20 and 6103.43.90.

# CUSTOMS AND EXCISE HIGHLIGHTS

CONTINUED

*In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.*



## 2.2 Technical amendments:

2.2.1 Inclusion of photoluminescent in certain tariff headings in heading 39.19 for self-adhesive plates; and

2.2.2 The creation of 8-digit tariff subheadings on mayonnaise (heading 2103.90.9) and peanut butter (heading 2008.11.1).

2.3 Draft amendment to create 8-digit tariff subheadings under heading 2809.20 to include a phosphoric content of 78 per cent or more.

Explanatory note: "Separate 8-digit tariff subheadings are created to distinguish between the acids used in food industry and that used in fertiliser industry".

Due date for comments: 13 October 2017. Send comments to: [mmaphosa@sars.gov.za](mailto:mmaphosa@sars.gov.za).

3. The International Trade Administration Commission has received the following Customs tariff applications:

3.1 The creation of a temporary rebate facility on safeguard duty for the importation of certain hot rolled steel classifiable under tariff headings 72.08 and 72.25 (ITAC Ref: 11/2017).

3.2 Written representations must be made within four (4) weeks of 22 September 2017 (ITAC Ref: 12/2017). The details are as follows:

3.2.1 Application for the creation of a temporary rebate provision on hot rolled steel, structural steel classifiable under tariff subheading 7208.25 and 7208.26.

3.2.2 Reduction in the rate of duty on canola/rape seed classifiable under subheading 1205.10.

3.2.3 Creation of a rebate provision for the importation of I and H sections, of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded of a height of 530 mm or more and of a height and width of 300 mm x 300 mm or more classifiable under tariff heading 7216.32 and 7216.33.

3.2.4 Exclusion of adult diapers under rebate item 412.13 and amendment of rebate item 320.12, which provides for the duty free importation of raw materials used in the manufacturing of baby diapers to also include adult diapers.

# CUSTOMS AND EXCISE HIGHLIGHTS

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3.2.5 Increase in the rate of duty on coated paper and paper board classifiable under tariff subheading 4810.92.90.

- SARS invited industry to attend a workshop session to be held on the comments received on the draft deferment rules (in terms of the Customs Duty Act, 2014).

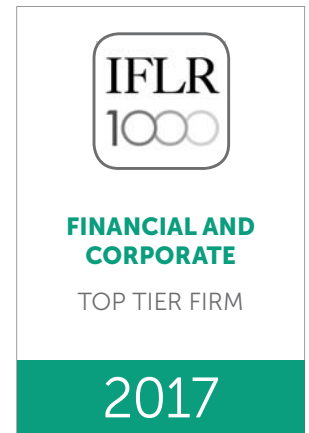
The workshop's details are as follows:  
 11 October 2017  
 10:00 – 11:30  
 2nd floor, Linton House Auditorium, SARS, Brooklyn, Pretoria

Directions: Linton House, 570 Fehrsen Street, Brooklyn Bridge, Brooklyn, Pretoria

(GPS co-ordinates: S25 46.295 E28 14.174)

RSVP: Samantha Authar ([sauthar@sars.gov.za](mailto:sauthar@sars.gov.za)) by 6 October 2017

*Petr Erasmus*



CHAMBERS GLOBAL 2011 - 2017 ranks our Tax and Exchange Control practice in Band 2: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2017 in Band 1: Tax: Indirect Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2017 in Band 1: Tax.

Mark Lington ranked by CHAMBERS GLOBAL 2017 in Band 1: Tax.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 in Band 3: Tax.



## OUR TEAM

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