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TAX AND EXCHANGE CONTROL ALERT

IN THIS ISSUE

RELAXATION OF EXCHANGE CONTROLS RELATING TO INTELLECTUAL PROPERTY AND FOREIGN INVESTMENT

National Treasury has made some changes to its exchange control policy which will be good news to South African residents who create intellectual property (IP), and who wish to invest offshore.

CUSTOMS AND EXCISE HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment.

RELAXATION OF EXCHANGE CONTROLS RELATING TO INTELLECTUAL PROPERTY AND FOREIGN INVESTMENT

Government proposes that companies and individuals no longer need the Reserve Bank's approval for standard intellectual property transactions.

Authorised dealers may now approve the outright sale, transfer and assignment of IP by South African residents to unrelated non-resident parties at an arm's length and a fair and market related price.

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Transfer of IP

Until now, National Treasury has not been keen on allowing South African residents to "export" IP. Some years ago, the Supreme Court of Appeal found that exchange control rules do not prohibit residents from transferring IP abroad without the approval of the South African Reserve Bank (SARB). However, National Treasury promptly amended the Exchange Control Regulations, 1961 (Regulations) to include IP under the definition of "capital" in an attempt to again bring IP transactions under its control.

The 2017 Budget Review that National Treasury issued on 22 February 2017 contains the following statements:

Government proposes that companies and individuals no longer need the Reserve Bank's approval for standard intellectual property transactions. It is also proposed that the 'loop structure' restriction for all intellectual property transactions be lifted, provided they are at arms-length and at a fair market price. Loop structure restrictions prohibit residents from holding any South African asset indirectly through a non-resident entity.

Subsequently, SARB issued Exchange Control Circular No 7/2017 (IP Circular) and also updated its manual for

authorised dealers (Currency and Exchanges Manual for Authorised Dealers) to expand on the statements above.

In terms of the IP Circular, authorised dealers may now approve the outright sale, transfer and assignment of IP by South African residents to unrelated non-resident parties at an arm's length and a fair and market related price. A new paragraph has been inserted into the Currency and Exchanges Manual for Authorised Dealers to give effect to this change. So, approval from SARB is no longer required.

However, there are certain caveats:

- The authorised dealers must view the sale, transfer or assignment agreement.
- The authorised dealers must view an auditor's letter or IP valuation certificate confirming the basis for calculating the royalty or licence fee.
- The transferors may not transfer the IP offshore and then license it back into South Africa.
- The person transferring the IP must repatriate the funds arising from the transaction to South Africa within a period of 30 days from accrual.
- The transaction is subject to appropriate tax treatment.

RELAXATION OF EXCHANGE CONTROLS RELATING TO INTELLECTUAL PROPERTY AND FOREIGN INVESTMENT

CONTINUED

Regulated local collective investment scheme management companies may now list exchange traded funds (ETFs) which relate to offshore assets on South African securities exchanges.



The relaxations on the transfer of IP should be welcomed. However, there is still much red tape: the transferor must obtain an auditor's letter or IP valuation supporting the price. Obtaining such a certificate or valuation will potentially be a costly and time-consuming exercise.

Exchange traded funds

There was also good news for South African resident investors and financial services providers in the 2017 Budget Review. Regulated local collective investment scheme management companies may now list exchange traded funds (ETFs) which relate to offshore assets on South African securities exchanges.

These funds will be able to invest as much as they like offshore, subject to the restrictions on their offshore portfolio allowances.

The funds will, unfortunately, still have to obtain prior written SARB approval to list.

Local individuals will be able to invest as much as they want in these funds in South Africa. The investments should not count towards their foreign capital allowances.

The great economist, Milton Friedman, is reported as having said, "I am in favor of cutting taxes under any circumstances and for any excuse, for any reason, whenever it's possible."

I feel the same about exchange controls, and welcome the measures introduced by the Government.

Ben Strauss

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CUSTOMS AND EXCISE HIGHLIGHTS

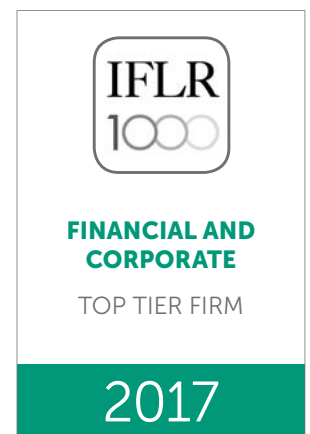
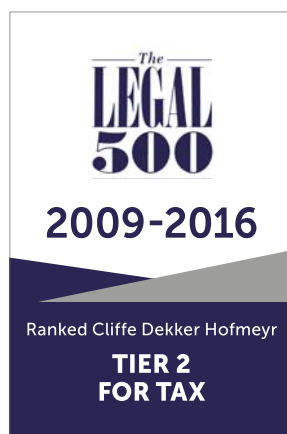
Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

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:

1. For those who missed it, we issued a [Special Edition Alert](#) on 22 February 2017 relating to Minister Gordhan's Budget Speech.
2. The Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill dated 22 February 2017 has been published for comment, which comments are due on 31 March 2017. It aims to amend tax legislation in accordance with the Budget Speech, including increases in excise duties & levies and the imposition of the "health promotion levy on sugary beverages".
3. The amendment of Schedule 1 Part 1, by the substitution and insertion of various tariff subheadings under headings 72.19 and 72.20 to increase the rate of customs duty on flat rolled products of stainless steel from free of duty to 5%.
4. Please contact us if additional information is required.

Petr Erasmus



OUR TEAM

For more information about our Tax and Exchange Control practice and services, please contact:



Emil Brincker
National Practice Head
Director
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Mark Linington
Private Equity Sector Head
Director
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Lisa Brunton
Senior Associate
T +27 (0)21 481 6390
E lisa.brunton@cdhlegal.com



Petr Erasmus
Director
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Heinrich Louw
Senior Associate
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Dries Hoek
Director
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Mareli Treurnicht
Senior Associate
T +27 (0)11 562 1103
E mareli.treurnicht@cdhlegal.com



Ben Strauss
Director
T +27 (0)21 405 6063
E ben.strauss@cdhlegal.com



Louis Botha
Associate
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com



Jerome Brink
Associate
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Gigi Nyanin
Associate
T +27 (0)11 562 1120
E gigi.nyanin@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

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