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TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE

EXCHANGE CONTROL: RECENT AMENDMENTS TO THE CURRENCY AND EXCHANGES MANUAL FOR AUTHORISED DEALERS

As part of its review of South Africa's exchange control rules, the Financial Surveillance Department of the South African Reserve Bank (FinSurv) from time to time issues exchange control circulars, notifying persons of changes to these rules.

CUSTOMS & EXCISE HIGHLIGHTS

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

EXCHANGE CONTROL: RECENT AMENDMENTS TO THE CURRENCY AND EXCHANGES MANUAL FOR AUTHORISED DEALERS

In sA.1 of the Manual, the definition of the phrase "foreign currency" has been amended.

Section A.4 of the Manual, dealing with guidelines and procedures in respect of treasury outsourcing companies and foreign exchange brokers has been amended.



As part of its review of South Africa's exchange control rules, the Financial Surveillance Department of the South African Reserve Bank (FinSurv) from time to time issues exchange control circulars, notifying persons of changes to these rules.

On 2 August 2018, FinSurv issued Exchange Control Circular No.12/2018 (Circular 12/2018) and on 20 August 2018, it issued Exchange Control Circular No.13/2018 (Circular 13/2018), setting out changes made to the Currency and Exchanges Manual for Authorised Dealers (Manual).

As explained in our [Tax & Exchange Control Alert of 21 April 2017](#), the Manual must be read in conjunction with the Exchange Control Regulations, 1961 (Regulations). It sets out the permissions and conditions applicable to transactions in foreign exchange that may be undertaken by Authorised Dealers (ADs) and/or on behalf of their clients in terms of Regulation 2(2) of the Regulations.

Amendments referred to in Circular 12/2018

In sA.1 of the Manual, the definition of the phrase "foreign currency" has been amended. Whereas the definition previously included "Rand to or from

a non-resident Rand account", this no longer forms part of the definition and instead a new definition for the phrase "Non-resident Rand" has been inserted. "Non-resident Rand" has been defined to mean Rand to or from a non-resident account that may be deemed, in certain circumstances permissible elsewhere in the Manual, as an acceptable payment mechanism in lieu of foreign currency. The definition further states that "Non-resident Rand" cannot, in any manner, be defined as foreign currency and is purely Rand held in a non-resident account or Rand received from a non-resident source.

Section A.4 of the Manual, dealing with guidelines and procedures in respect of treasury outsourcing companies and foreign exchange brokers has been amended. In terms of sA.4(B) of the Manual, such entities must still obtain FinSurv's written approval before it can commence with foreign exchange business, but pursuant to the amendment, applicant companies must now obtain and



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Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2018 in Band 1: Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017- 2018 in Band 1: Tax: Consultants.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 3: Tax.

EXCHANGE CONTROL: RECENT AMENDMENTS TO THE CURRENCY AND EXCHANGES MANUAL FOR AUTHORISED DEALERS

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References to the "Financial Services Board" in sB.2 of the Manual, have been replaced with the "Financial Sector Conduct Authority".



submit the treasury outsourcing company and foreign exchange broker application form that may be downloaded from the South African Reserve Bank's (SARB) website. Prior to the amendment, the Manual simply stated that applications had to deal with certain aspects referred to in the Manual, for example, the operating business model to be followed by the applicant.

The conditions for conducting the business of a treasury outsourcing company and foreign exchange broker, in sA.4(C)(i) of the Manual, have also been amended in three respects:

- Whereas sA.4(C)(i)(a) previously required the treasury outsourcing company or foreign exchange broker, its officers and shareholders to be suitably qualified and be deemed as 'fit and proper', the requirement is now that it must at all times be in possession of a valid Financial Service Provider licence issued by the Financial Sector Conduct Authority (FSCA);
- Section A.4(C)(i)(b) previously stated the treasury outsourcing company or foreign exchange broker may not buy or sell foreign currency for its own account and may not hold foreign currency or borrow or lend foreign currency. This requirement now appears in sA.4(C)(i)(c). Section A.4(C)(i)(b) now requires that a letter of compliance, on the official letterhead of the treasury outsourcing company or foreign exchange broker signed by two senior officials, must be submitted to FinSurv on an annual basis, for the period ending 31 December of each year. It must be sent by email to the address specified and the format of the letter of compliance can be downloaded from the SARB's website; and

- In terms of sA.4(C)(i)(l) of the Manual, FinSurv had the right at any stage to carry out an inspection of the treasury outsourcing company's or foreign exchange broker's activities, record keeping, management controls and any other aspects deemed necessary. This requirement now appears in sA.4(C)(i)(m) of the Manual and sA.4(C)(i)(l) now states that the requirements of the Financial Intelligence Centre Act No. 38 of 2001 must be complied with by the AD and the treasury outsourcing company or foreign exchange broker concerned. In addition, the treasury outsourcing company or foreign exchange broker must comply with the requirements of the Financial Advisory and Intermediary Services Act No. 37 of 2002.

Section B.2(K)(i) of the Manual, dealing with legacies and distributions from deceased estates and testamentary trusts has been amended to clarify the non-resident persons to whom legacies and distributions can be remitted. Previously, sections B.2(K)(i)(a) and B.2(K)(i)(b) stated that amounts could be remitted abroad to non-residents, including emigrants, provided the other requirements of these sections were met. These sections have now been amended to state that amounts can be remitted abroad to "non-resident private individuals, non-resident entities and/or trusts with no direct and/or indirect South African interest, including emigrants", provided the other requirements in the sections are complied with.

Finally, references to the "Financial Services Board" in sB.2 of the Manual, have been replaced with the "Financial Sector Conduct Authority".

EXCHANGE CONTROL: RECENT AMENDMENTS TO THE CURRENCY AND EXCHANGES MANUAL FOR AUTHORISED DEALERS

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Pursuant to the amendment, the period to submit such quarterly reports has been reduced to two months after the end of the calendar quarter.



Amendments referred to in Circular 13/2018

Two amendments have been made to sB.2(H)(v) of the Manual, dealing with the reporting requirements for South African institutional investors.

In terms of sB.2(H)(v)(a)(cc), all quarterly asset allocation reports had to be submitted within three months of the end of the calendar quarter to Finsurv either through an AD or via bulk or single direct reporting. Pursuant to the amendment, the period to submit such quarterly reports has been reduced to two months after the end of the calendar quarter. The manner of submission remains the same.

In terms of sB.2(H)(v)(a)(ee), managing institutions that manage assets on behalf of other institutional investors were required to report the asset allocation of such funds or policies to the originating institution as at the end of each calendar quarter within one month of each calendar quarter end. The section has been amended to state that the reporting of the aforementioned asset allocation must now take place within 15 days of each calendar quarter year-end.

Louis Botha



CUSTOMS & 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.



Herewith below selected highlights in the Customs & Excise environment since our last instalment:

1. Imposition of provisional payment:
 - 1.1 A provisional payment has been imposed in the form of safeguard duty on imports of other screws, fully threaded with hexagon heads, made of steel (of tariff subheading 7318.15.39).
2. Amendments to Schedules to the Customs & Excise Act No. 91 of 1964 (Act) (certain sections quoted from the SARS website):
 - 2.1 Schedule 1 Part 1:
 - 2.1.1 The substitution of tariff subheading 3901.40 to reduce the rate of customs duty on ethylene-alpha-olefin copolymers having a specific gravity of less than 0.94 from 10% to free;
 - 2.1.2 The substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 to increase the rate of customs duty on sugar from 233.81c/kg to 419.52c/kg due to the increase in the Dollar-Based Reference Price on sugar from US\$566/ton to US\$680/ton;
 - 2.2 Schedule 2:
 - 2.2.1 The substitution of safeguard item 260.03/72.08/01.04 to exclude rebate items 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to exclude certain hot-rolled coils from being subject to safeguard duty (10 August up to and including 10 August 2018);
 - 2.2.2 The substitution of safeguard item 260.03/72.08/01.04 to exclude rebate items 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to exclude certain hot-rolled coils from being subject to safeguard duty (11 August 2018 up to and including 10 August 2019);
 - 2.2.3 The substitution of safeguard item 260.03/72.08/01.04 to exclude rebate items 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to exclude certain hot-rolled coils from being subject to safeguard duty (11 August 2019 up to and including 10 August 2020);

CUSTOMS & EXCISE HIGHLIGHTS

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



- 2.2.4 The insertion of rebate item 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to create a rebate facility on certain hot-rolled coils classifiable in tariff subheading 72.08.
- 2.2.5 The substitution of safeguard items 260.03/72.08/01.04, 260.03/7225.40/01.06 and 260.03/7225.99/01.06 to exclude rebate item ranges 460.15/7208.5/08.05 to 460.15/7208.5/12.05, 460.15/7225.40/10.06 to 460.15/7225.40/14.06 and rebate item 460.15/7225.99/02.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty (10 August up to and including 10 August 2018);
- 2.2.6 The substitution of safeguard items 260.03/72.08/01.04, 260.03/7225.40/01.06 and 260.03/7225.99/01.06 to exclude rebate item ranges 460.15/7208.5/08.05 to 460.15/7208.5/12.05, 460.15/7225.40/10.06 to 460.15/7225.40/14.06 and rebate item 460.15/7225.99/02.06 in order to exclude certain hot-rolled steel plates from being subject to
- safeguard duty (11 August 2018 up to and including 10 August 2019);
- 2.2.7 The substitution of safeguard items 260.03/72.08/01.04, 260.03/7225.40/01.06 and 260.03/7225.99/01.06 to exclude rebate item ranges 460.15/7208.5/08.05 to 460.15/7208.5/12.05, 460.15/7225.40/10.06 to 460.15/7225.40/14.06 and rebate item 460.15/7225.99/02.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty (11 August 2019 up to and including 10 August 2020);
- 2.2.8 The substitution of safeguard items 260.03/72.08/01.04, and 260.03/7225.40/01.06 to exclude rebate item ranges 460.15/7208.36/01.06 to 460.15/7208.37/01.06, 460.15/7208.5/13.05 to 460.15/7208.5/17.05 and 460.15/7225.40/15.06 to 460.15/7225.40/18.06 in order to exclude certain hot-rolled steel plates and hot-rolled steel coils from being subject to safeguard duty (11 August 2018 up to and including 10 August 2019);

CUSTOMS & EXCISE HIGHLIGHTS

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2.2.9 The substitution of safeguard items 260.03/72.08/01.04, and 260.03/7225.40/01.06 to exclude rebate item ranges 460.15/7208.36/01.06 to 460.15/7208.37/01.06, 460.15/7208.5/13.05 to 460.15/7208.5/17.05 and 460.15/7225.40/15.06 to 460.15/7225.40/18.06 in order to exclude certain hot-rolled steel plates and hot-rolled steel coils from being subject to safeguard duty (11 August 2018 up to and including 10 August 2019);

2.2.10 The substitution of safeguard items 260.03/72.08/01.04, and 260.03/7225.40/01.06 to exclude rebate item ranges 460.15/7208.36/01.06 to 460.15/7208.37/01.06, 460.15/7208.5/13.05 to 460.15/7208.5/17.05 and 460.15/7225.40/15.06 to 460.15/7225.40/18.06 in order to exclude certain hot-rolled steel plates and hot-rolled steel coils from being subject to safeguard duty (11 August 2019 up to and including 10 August 2020); and

2.3 Schedule 4:

2.3.1 The insertion of rebate items 460.15/7216.32/01.06 and 460.15/7216.33/01.06 in order to create a rebate facility for the importation of certain structural steel in the form of H and I sections classifiable in tariff subheadings 7216.32 and 7216.33;

2.3.2 The insertion of various rebate items applicable to tariff heading 72.08, tariff subheadings 7225.40 and 7225.99 respectively in order to create a rebate facility on certain hot-rolled steel plates; and

2.3.3 The insertion of various rebate items applicable to tariff heading 72.08 and tariff subheading 7225.40 respectively in order to create a rebate facility on certain hot-rolled steel plates and hot-rolled steel coils

3. The International Trade Administration Commission has (certain sections quoted from the notices):

3.1 Issued an invitation to the public interest hearing in the investigation for remedial action in the form of safeguards against the increased imports of other screws fully threaded with hexagon heads made of steel.

CUSTOMS & EXCISE HIGHLIGHTS

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



The subject product is described as other screws fully threaded with hexagon heads made of steel classifiable under tariff subheading 7318.15.39.

A public hearing is scheduled for 18 September 2018. All interested parties who wish to attend the public hearing on public interest and wish to make oral representations to the Commission on public interest, should indicate their intention to attend on or before 31 August 2018 at 15h00 to the Senior Manager: Trade Remedies I.

Enquiries may be directed to Ms Carina van Vuuren at telephone 012 394-3594 or the investigating officers Mr Zuko Ntsangani at telephone number 012 394-3662 or Ms Selma Takacs at telephone number 012 394-3596.

3.2 Issued its final determination in relation to its investigation into the alleged dumping of drawn and float glass originating in or imported from Indonesia. The Commission determined that:

3.2.1 The subject product originating in or imported from Indonesia was being dumped into the SACU market;

3.2.2 The SACU industry suffered material injury; and

3.2.3 There was a causal link between the dumping of the subject products and the material injury.

The Commission therefore decided to recommend to the Minister of Trade and Industry that definitive anti-dumping duties be imposed on float glass originating in or imported from Indonesia, classifiable under tariff subheadings 7005.29.17, 7005.29.23, 7005.29.25 and 7005.29.35.

4. The Department of Agriculture, Forestry and Fisheries (certain sections quoted from the notices):

4.1 Published standards and requirements regarding control of the export of Kiwifruit as stipulated in Government Notice No. R. 1983 of 23 August 1991; and

4.2 Established a levy and determined guideline prices on cattle, sheep, goats, red meat, red meat products, processed pork, hides and skins per Government Notice No. 41839 of 17 August 2018. The levy applies to (among other things):

4.2.1 Unprocessed hides and skins from designated animals exported from the Republic of South Africa;

CUSTOMS & EXCISE HIGHLIGHTS

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- 4.2.2 Red meat and red meat products (excluding hides and skins) imported into the Republic of South Africa; and
 - 4.2.3 Designated animals exported live from the Republic of South Africa.
 - 5. The National Regulator of Compulsory Specifications (NRCS) has per government gazette No. 41827 dated 10 August 2018 (certain sections quoted from the gazette):
 - 5.1 Declared a Compulsory Specification for aquacultured live and chilled raw bivalve molluscs.
 - 5.2 Amended the Compulsory Specification for pneumatic tyres for:
 - 5.2.1 Passenger cars and their trailers; and
 - 5.2.2 Commercial vehicles and their trailers
 - 6. Please advise if additional information is required.
- The notice requires, among other things, application for approval (by the NRCS) of the product imported into and exported from South Africa.
- The amendments are effective within 6 months from the date of publication of the notices.

Petr Erasmus

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.

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