

3 MAY 2019

TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE >

Exchange control and non-residents investing in South Africa: Relaxation of policy pertaining to payments

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In specific instances, where the Manual previously required payments by non-residents to be made with "Rand from a non-resident Rand account", it can now be done with "Rand from a non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer."

On 18 April 2019, the Financial Surveillance Department of the South African Reserve Bank (FinSurv) released three circulars, including Exchange Control Circular 9/2019 (Circular), regarding changes to South Africa's exchange control (Excon) rules. The Circular deals with changes in the policy pertaining to payments in different contexts, made by persons or entities who are regarded as non-residents for Excon for purposes.

In creating the context within which the Circular is released, it states that *"flowing from representations made, Authorised Dealers and Authorised Dealers with limited authority are advised that non-residents may freely invest in South Africa, provided that suitable documentary evidence is viewed in order to ensure that such transactions are concluded at arm's length, at fair market related prices and are financed in an approved manner. Such financing must be in the form of the introduction of foreign currency or Rand from a non-resident Rand account."*

The position prior to the issue of the Circular

The Circular states, with reference to the Currency and Exchanges Manual for Authorised Dealers (last updated on 18 April 2019) (Manual), that in specific instances, where the Manual previously required payments by non-residents to be made with "Rand from a non-resident Rand account", it can now be done with "Rand from a non-resident Rand account in the name of the non-resident and/or Rand from a vostro account held in the books of the Authorised Dealer."

Excon rules affected by the amendment

In terms of the Circular, the amendment relaxes the rules pertaining to payments in the following contexts:

- The issuing of credit and/or debit cards to foreign visitors to South Africa (B.5(A)(iii)(d) of the Manual);
- Payment of the fare of a non-resident for travel between destinations outside South Africa (sB.8(B)(ii)(d) of the Manual);
- Outward freight sold on a Cost and Freight or Cost Insurance and Freight basis (sB.9(C)(i)(b) of the Manual);
- Payment of premiums to South African resident long-term insurers, in respect of policies issued by a South African resident long-term insurer to a non-resident or emigrant (sB.10(I)(i) of the Manual);
- Payments received from a foreign importer (buyer) in the context of merchanting trade transactions (sB.12(A)(ii) of the Manual);
- Selling commissions due to independent selling agents (sB.13(B)(i) of the Manual);
- The rules pertaining to exports and the receipt of payment by South African exporters for exported goods (sB.18(B) of the Manual);
- The rules pertaining to exports, specifically the receipt of payment for replacement goods, short shipment or goods under guarantee (sB.19(A)(i) of the Manual);

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...continued

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- The final settlement of amounts owing in the context of exports, including the refunding by exporters of non-resident purchasers (sB.19(L) of the Manual);
- Export of gold jewellery by manufacturing jewellers (sC.(A)(ii)(a) of the Manual);
- Export of Krugerrand coins or fractional Krugerrand coins (sC.(E)(i) of the Manual);
- The marketing and sale of gold to non-residents (sC.(F)(ii) of the Manual);
- The making of payments within the context of hedging operations (sD.2(E)(iv)(b)(bb) of the Manual); and
- Various matters pertaining to the securities control provisions in the Manual, including the payment requirement in the context of endorsing securities of a non-resident, payment of JSE-listed shares issued pursuant to a rights issue or claw-back offer, the purchase of assets by a non-resident and the issue of bearer securities (see sections G.(A), G.(B), G.(C) and G.(M) of the Manual).

Rationale for and benefits of the amendment

While the Circular does not state the exact rationale for the change in Excon policy and the amendment to the abovementioned provisions in the Manual,

the Circular seems to suggest that the amendment may have been aimed at making it easier for non-residents to invest in and do business in South Africa.

The main benefit of the amendment is that to the extent that a transaction is concluded between a South African resident and a non-resident in terms of the abovementioned provisions, it is no longer necessary for the non-resident to first open a non-resident Rand account and make payment from that account. This would likely have created an additional administrative burden for the non-resident to make payment. Where a transaction is concluded in terms of the abovementioned provisions and the non-resident's foreign bank has a vostro account with a local South African bank, it can request the foreign bank to assist it to make payment to the South African resident. For example, the non-resident could pay an amount of foreign currency into the foreign bank's vostro account, which the foreign bank can then pay to the South African resident with whom the non-resident was transacting.

The amendment should be welcomed and will hopefully make it easier for non-residents to transact and do business in South Africa.

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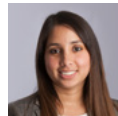
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