

2 OCTOBER 2020

# TAX & EXCHANGE CONTROL ALERT

## IN THIS ISSUE

### While we still have exchange control...some further changes announced

In the 2020 Budget Review, it was announced that South Africa's exchange control (Excon) regime would be replaced by a new capital flow management system in 2021. We discussed this in our [Special Edition Budget Speech Alert 2020](#). During the recent workshops on the draft Taxation Laws Amendment Bill, 2020 and the draft Tax Administration Laws Amendment Bill, 2020, National Treasury confirmed that this change would take place in 2021 and that the tax proposals tied to this change would likely be implemented in 2021.

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In the 2020 Budget Review, it was announced that South Africa's exchange control (Excon) regime would be replaced by a new capital flow management system in 2021. We discussed this in our [Special Edition Budget Speech Alert 2020](#). During the recent workshops on the draft Taxation Laws Amendment Bill, 2020 and the draft Tax Administration Laws Amendment Bill, 2020, National Treasury confirmed that this change would take place in 2021 and that the tax proposals tied to this change would likely be implemented in 2021.

At this stage, it is unclear exactly when the capital flow management system will come into effect and whether the rules of the system will take the form of regulations published under the Currencies and Exchanges Act 9 of 1933, similar to the Exchange Control Regulations, 1961 (Excon Regulations). While in effect, the Excon Regulations still govern the exchange control laws in South Africa and all persons must comply with them.

As discussed in some of our previous Alerts, the Excon Regulations must be read with the Currency and Exchanges Manual for Authorised Dealers (AD Manual), which essentially reflects the manner in which the Financial Surveillance Department of the South African Reserve Bank (FinSurv) interprets and applies the Excon Regulations.

### Changes announced by FinSurv

Since the publication of the Budget Review on 26 February 2020, FinSurv has released a few more circulars, in which it announced amendments to the rules

of South Africa's Excon regime, which were accompanied by amendments to the AD Manual, where these changes are reflected.

In this article, we will briefly discuss some of the most recent changes announced, as contained in Exchange Control Circular No 7/2020 (Circular 7), Exchange Control Circular No 8/2020 (Circular 8) and Exchange Control Circular No 9/2020 (Circular 9).

### Circular 7: Transactions with Common Monetary Residents

Pursuant to the publication of this circular, foreign currency may now be sold to Common Monetary Area (CMA) residents residing and working in South Africa, provided the CMA resident can substantiate that the value of such funds is reasonable in relation to the income generating activities in South Africa. CMA residents who travel overland to and from other CMA countries through other Southern African Development Community countries may be accorded foreign currency equivalent of an amount not exceeding R25,000 per calendar year. This allocation will not form part of the permissible travel allowance for residents.

Circular 7 further states that CMA investors who directly approach authorised dealers for the purpose of acquiring foreign asset exposure, would first have to obtain an approval letter from the relevant central bank or an appropriate mandated body of the CMA country. While not explicitly stated in the circular, the relevant approval letter would likely only need to be obtained by residents from eSwatini, Lesotho and Namibia. The

## While we still have exchange control...some further changes announced...continued

The circular notes that to address interpretational issues on the Macro-Prudential Limit Return raised by authorised dealers and their external auditors, section B.2(l) of the AD Manual has been deleted and replaced in its entirety.

circular finally notes that CMA residents may enter into Rand transactions with South African institutional investors, but that the requirement to obtain an approval letter does not apply in respect of the discretionary business of the South African institutional investor.

### Circular 8: Macro-prudential limit for authorised dealers

The circular notes that to address interpretational issues on the Macro-Prudential Limit Return raised by authorised dealers and their external auditors, section B.2(l) of the AD Manual has been deleted and replaced in its entirety. Some of the differences between the old section B.2(l) and the amended section B.2(l) are the following:

- Section B.2(l)(i) now expressly states that the macro-prudential limit is only applicable to authorised dealers and restricted authorised dealers who are not branch operations of foreign institutions.
- The foreign exposure for the macro-prudential limit has been clarified to mean all foreign assets held where such assets are foreign currency denominated, except for the dispensations in section B.2(l)(iv)(b), namely the following:
  - foreign exposures directly related to infrastructural development by the authorised dealer;
  - outward foreign direct investment by authorised dealers, including the acquisitions in terms of section 52 of the Banks Act 94 of 1990;

- current foreign currency (CFC) account balances; and
- foreign currency denominated facilities made available to South African companies in respect of bona fide foreign direct investments; infrastructural development; trade finance facilities relating to the import and export of goods from South Africa; and working capital loan facilities to residents.

Most of these dispensations were included in the old section B.2(l), but were not as clearly delineated. Previously, these were loosely listed in section B.2(l)(viii) of the old section B.2(l)

### Circular 9: Various amendments to the AD Manual

The circular indicates that to address market terminology misalignment, various terms in the AD Manual were reviewed and new definitions have been added under Section A.1 of the AD Manual. Some of the definitions include references to the Pension Funds Act, Insurance Act and the Financial Markets Act.

The circular further notes that section B.2(H) of the AD Manual, which deals with rules pertaining to South African institutional investors, was amended to highlight the requirements authorised dealers must adhere to when facilitating the transfer of funds on behalf of institutional investors and the requirements institutional investors must adhere to in obtaining foreign exposure. It also outlines the conditions under which existing local and offshore assets can be transferred between institutional investors or between managing institutions.

## While we still have exchange control...some further changes announced...*continued*

The AD Manual has been amended to outline measures that may be taken by FinSurv, as administrator of the Excon system, in respect of any deviation or non-compliance by an institutional investor.

Circular 9 further notes that a dispensation has been granted for institutional investors to open customer foreign currency accounts to accept foreign currency deposits emanating from the disinvestment proceeds of foreign assets, pending the reinvestment of the funds offshore.

The circular also notes that the AD Manual has been amended to outline the circumstances in which discretionary foreign assets under the management of a discretionary financial services provider may be registered in the name of the underlying retail client as the beneficial owner.

Finally, the AD Manual has been amended to outline measures that may be taken by FinSurv, as administrator of the Excon system, in respect of any deviation or non-compliance by an institutional investor with –

- the Excon Regulations;
- the requirements of the AD Manual;
- specific authorities granted; and
- any other requirements or conditions as may be stipulated from time to time by FinSurv.

### Comment

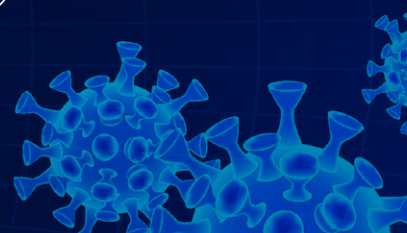
Entities or persons affected by the amendments discussed in this article, in particular South African institutional investors, should take note of the amendments and ensure that they comply with them, while the Excon Regulations and the AD Manual remain in effect.

As stated in the introductory part of this article, it is unfortunately unclear for how long the Excon Regulations, read with the AD Manual, will remain in effect and exactly when they will be replaced by the capital flow management framework. While this situation is not ideal, persons would be well served to ensure that they continue complying with the existing Excon framework, including any amendments thereto. It is possible that parts of the capital flow management framework may be based on the Excon Regulations read with the AD Manual, in which case, it should be simpler for entities governed by that part of the capital flow management framework to ensure compliance.

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### BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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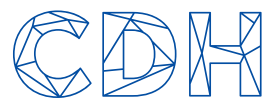
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