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TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE

Investing abroad? The foreign investment allowance is at your disposal

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Customs & Excise Highlights

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

Investing abroad? The foreign investment allowance is at your disposal

Where an individual wishes to transfer more than R1 million abroad during a calendar year, such person would have to make use of their foreign investment allowance.

It is common nowadays for South African persons to diversify their investment portfolio and to invest in foreign jurisdictions. When doing so, South African residents must ensure that they transfer funds abroad in a manner that complies with South Africa's exchange control rules. In our [Tax & Exchange Control Alert of 6 October 2017](#), we explained how South African resident individuals can make use of their annual single discretionary allowance (SDA) of R1 million, to transfer and take funds abroad without the prior approval of the South African Reserve Bank (SARB) and without first having to obtain a tax clearance certificate.

Where an individual wishes to transfer more than R1 million abroad during a calendar year, such person would have to make use of their foreign investment allowance (FIA), as dealt with in the Currency and Exchanges Manual for Authorised Dealers (AD Manual), which was most recently updated on 18 April 2019.

What is the foreign investment allowance (FIA)?

In terms of the FIA, South African resident individuals can transfer up to R10 million abroad during a calendar year, over and above the R1 million that can be transferred by making use of their SDA.

How does a person make use of the FIA?

In terms of section B.2(B) of the AD Manual, a South African resident individual must comply with certain requirements to make use of the FIA. The rules pertaining to the FIA are the following:

- A person must obtain a duly electronically completed "Tax Clearance Certificate – Foreign Investment Allowance" issued by the South African Revenue Service (SARS) bearing the SARS logo and specific background watermark must be presented to the branch of the Authorised Dealer, before funds can be transferred using one's FIA;
- Only individuals who are taxpayers in good standing and are 18 years and older, may make use of the FIA for investment purposes abroad;
- No more than the amount reflected in the tax clearance certificate (TCC) may be transferred abroad. The TCC will only be valid for a period of 12 months;
- The format and content of the TCC is prescribed and no deviation therefrom whatsoever may be accepted;
- In terms of the SARS Tax Compliance Status System, a tax compliance status (TCS) letter will be issued to the applicant that will contain the applicant's tax number and PIN. An Authorised Dealer must use the PIN to verify the applicant's TCS via eFiling before effecting a transfer in terms of the FIA;

Investing abroad? The foreign investment allowance is at your disposal...*continued*

Funds transferred abroad may also not be re-introduced into South Africa as a loan to a CMA resident.

- The funds transferred abroad using the FIA may not be used to enter into a transaction or series of transactions that create a loop structure, that is, where the result is that the South African resident individual acquires an interest in an offshore entity, which in turn, holds interests in assets situated in the Common Monetary Area (CMA), including South Africa;
- Funds transferred abroad may also not be re-introduced into South Africa as a loan to a CMA resident;
- Unintentional loop structures created through the authorised use of the FIA, whereby funds invested with non-resident asset or fund managers, who invest in foreign companies that have CMA assets and/or offshore global investment funds that directly or indirectly hold CMA investments over which the South African investor has no control, are permitted; and
- Individuals that make use of their FIA may not enter into any transactions whereby capital or the right to capital is directly or indirectly exported from South Africa. In other words, they may not enter into a foreign commitment with recourse to South Africa. However, private individuals may raise loans

abroad to finance the acquisition of foreign assets without recourse to South Africa, but may only use authorised foreign assets as collateral in such instances.

Practical considerations

From a practical perspective, applicants will first have to apply to SARS to obtain the TCC referred to above. In order to obtain the TCC, taxpayers will have to submit an application, comprising information and supporting documentation required by SARS, to confirm their TCS. The TCS application must be submitted to SARS via eFiling and must comply with, among other things, s256 of the Tax Administration Act, No 28 of 2011. In the application, applicants will have to, among other things, indicate the source of the funds that they want to transfer abroad and provide proof of this. For example, if the funds transferred abroad were derived from the sale of immovable property, an applicant will have to provide proof of this.

Once the TCS application has been approved, the applicant can request SARS to issue a TCC as proof that the TCS application was approved, which can then be presented to the relevant Authorised Dealer.

Louis Botha

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

Customs & Excise Highlights

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1. Draft amendments in relation to carbon emissions tax (certain sections quoted from the SARS website):vzzz

Government proposed the introduction of carbon tax as announced by the Minister of Finance in Budget Review 2015 and further outlined in Budget Review 2019. This tax gives effect to the polluter-pays principle. The tax will come into effect on 5 June 2019.

Schedules to the Customs & Excise Act, No 91 of 1964 (Act):

- Draft amendment to Schedule 1 Part 1 – in order to insert the provision of carbon emissions tax;
- Draft amendment to Schedule 1 Part 3F – to provide for the environmental levy on carbon emissions; and
- Draft amendment to Schedule 6 Part 6 – to provide for rebates and refunds on carbon tax.

Comments can be submitted to MMaphosa@sars.gov.za by 31 May 2019.

Draft rule amendment:

Draft rules have been inserted for implementation of the carbon tax, to provide details on the envisaged carbon tax administration, including the registration of clients, licensing of emissions facilities, carbon tax environmental levy accounting and application of allowances as rebates, all of which need to be synchronised with the essential systems development. Form DA 180

– Environmental levy return for carbon tax will be added at a later stage. Also note that this account only needs to be submitted in July 2020.

- DA 185 – Application form – Registration / licensing of customs and excise clients;
- DA 185.4A17 – Client Type 4A17 – Operator of an emissions generation facility below the carbon tax threshold; and
- DA 185.4B2 – Licensing Client Type 4B2 – Manufacturing warehouse.

Comments can be submitted to C&E_legislativecomments@sars.gov.za by 31 May 2019.

2. The Department of Trade and Industry published the following notices on 3 May 2019 (certain sections quoted from the notice):

- Regulations relating to the tariff of fees charged for services rendered in terms of the Legal Metrology Act by the National Regulator for Compulsory Specifications (NRCS): Amendments.

It has regard to the deletion of the existing tariffs and the substitution thereof with the tariffs as set out in the Schedule.

- Regulations relating to the payment of levy and fees with regard to compulsory specifications: Amendments.

It has regard to the deletion of the existing tariffs for Automotive, Chemical, Mechanical and Materials, Electrotechnical, and Food and Associated Industries, and the substitution thereof with the tariffs as set out in the Schedule.

Customs & Excise Highlights...continued

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3. The Department of Agriculture, Forestry and Fisheries published the following notices on 12 April 2019 (certain sections quoted from the notices):

- Establishment of statutory measure – registration of certain persons in respect of pome fruit, stone fruit, grapes and citrus fruit.

The purpose and aims of this statutory measure are to compel exporters and producers of fruit to register with Agri-hub. These shall also include any person, eg a producer who acts in the capacity of the aforementioned persons. Registration of the said persons is necessary in order to ensure that market information in respect of fruit is made available for all role-players in the relevant industry.

- Establishment of statutory measure – records and returns in respect of pome fruit, stone fruit, grapes and citrus fruit.

The purpose and aims of this statutory measure are to compel exporters and producers of fruit to keep records and furnish returns to Agri-hub. These shall also include any person, eg a producer who acts in the capacity of the aforementioned persons.

These measures are necessary to ensure that continuous, timeous and accurate information relating to the fruit industry is available to all role-players in order for them to make informed decisions.

- Deciduous fruit industry application for the continuation of statutory measures on pome and stone fruit.

The Minister of Agriculture, Forestry and Fisheries received a request from Hortgro, on behalf of Hortgro Pome and Hortgro Stone, for the continuation of statutory measures (levies, records and returns and registration) on pome fruit (apples and pears) and stone fruit (plums/prunes, peaches/nectarines and apricots) in terms of the Marketing of Agricultural Products Act, 1996. Hortgro requested that the proposed statutory measures be approved for a new 4 (four) year period with effect from 1 October 2019 and lapse 4 (four) years later.

Directly affected groups (eg agents, certification bodies, exporters, export inspection bodies, fresh produce markets, producers, processors and traders) in the pome and stone industry are kindly requested to submit any comments, in writing, regarding the proposed statutory measures, to the National Agricultural Marketing Council (NAMC) on or before 10 May 2019, to enable the Council to finalise its recommendation to the Minister in this regard.

Enquiries may be made to the NAMC, Mathilda van der Walt, e-mail: mathildavdw@namc.co.za, tel: (012) 341-1115, fax: (012) 341-1911.

Customs & Excise Highlights...continued

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4. The following notice was published in Government Gazette by the Economic Development Department on 2 May 2019:

- Extension of the policy directive on the exportation of ferrous and non-ferrous waste and scrap metal

On 10 May 2013, the Minister of Economic Development (Minister) issued a Trade Policy Directive to the International Trade Administration Commission of South Africa (ITAC) in terms of s5 of the International Trade Administration Act, No 71 of 2002 on the exportation of ferrous and non-ferrous waste and scrap metal.

In the Budget Speech of 20 February 2019, the Minister of Finance stated that the National Treasury will work with the Department of Trade and Industry and the Department of Economic Development to explore the introduction of an export tax on scrap metal.

The Minister is considering extending the Policy Directive for a period of nine months from 30 June 2019 until March 2020, to enable the National Treasury, the Department of Trade and Industry and the Department of Economic Development to explore the introduction of an export tax on ferrous and non-ferrous waste and scrap metal and its implications for the Directive.

Representations and comments must be submitted within a period of 14 days from publication of this notice, to the Minister of Economic Development for the attention of Dr Molefe Pule, email: Ministry@economic.gov.za. Economic Development Department, Private Bag X149, Pretoria, 0001 or hand delivered at 77 Meintjies Street, Block A, Utangamiri Building, 3rd Floor, Sunnyside, 0132.

Petr Erasmus

CHAMBERS GLOBAL 2019 ranked our Tax & Exchange Control practice in Band 1: Tax.

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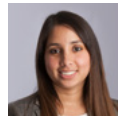
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