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TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE

Relaxation of exchange controls: A not so relaxing episode...

On 29 October 2020, the South African Reserve Bank (SARB) published Exchange Control Circular No. 15/2020 (Circular) titled *"Reclassification of inward listed debt and derivative instruments as well as exchange traded funds referencing foreign assets"*.

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On 29 October 2020, the South African Reserve Bank (SARB) published Exchange Control Circular No. 15/2020 (Circular) titled "Reclassification of inward listed debt and derivative instruments as well as exchange traded funds referencing foreign assets".

The Circular states that "following the Minister of Finance's announcement in the 2020 Medium Term Budget Policy Statement, Authorised Dealers are advised that all the remaining foreign classified debt and derivative instruments as well as exchange traded funds referencing foreign assets, that are inward listed on a South African exchange, traded and settled in Rand, will be reclassified as domestic. The classification of all inward listed shares on a South African exchange remains domestic. The approval process in respect of the inward listing of all instruments on a South African exchange remains extant."

The announcement in the Circular was welcomed by some as a positive change to South Africa's exchange control (Excon) regime. This was especially as some understood it to mean that the 30% foreign investment limit applicable to institutional investors was effectively lifted. However, on 24 November 2020, National Treasury, the SARB and the Financial Sector Conduct Authority issued a joint media statement (Media Statement) stating that they "intend to review Exchange Control Circular 15/2020 issued by the SARB, following the announcement by the Minister of Finance in the Medium Term Budget Policy Statement (MTBPS) on 28 October 2020." The Media Statement further states that the Circular is "suspended with immediate effect, to reduce the scope for ambiguity related to compliance with the prudential framework for regulated funds. An amended circular will be issued following a period of consultations. All approvals

granted on the basis of Circular 15/2020 are also suspended" and that the dispensation before Circular 15/2020 remains in tact.

Why the change of heart?

According to the Media Statement, the review is limited to clarify the scope of changes to the announcement related to the reclassification of inward listed instruments. Specifically, the Media Statement states that the decision to review is as a result of enquiries by various stakeholders having different interpretations on the extent to which the Circular affects the foreign investment limits applicable to institutional investors. This includes retirement funds, collective investment schemes and insurers.

The Media Statement further states that the MTBPS announcement aims to create an enabling environment that makes it easier for foreign investors to invest in South Africa and to support South Africa's growth as an investment and financial hub for Africa. The Media Statement also clarifies that the announced reforms to the capital flow management framework do not alter the prudential framework currently applicable to all regulated funds, including retirement funds, collective investment schemes and insurance.

What did the change announced in the Circular entail?

In summary, the Circular stated that sections B.2(H), B.2(I) and H of the Currency and Exchanges Manual for Authorised Dealers (AD Manual) would be amended. Section B.2(H) deals with South African institutional investors, section B.2(I) deals with the macro-prudential limit for authorised dealers and section H deals with inward listings on the JSE Limited.

Relaxation of exchange controls: A not so relaxing episode...*continued*

Along with the announcement that the Circular is suspended, the Media Statement indicates that stakeholders and the public are invited to submit comments to the SARB as to how the Circular should be amended.

Specifically, the changes announced in the Circular (which is now suspended), include the following:

- It was proposed that certain parts of sections B.2(H) of the AD Manual would be amended, specifically where it deals with investment in foreign assets and the allowance to invest an additional 10% of total retail assets under management in African assets;
- The proposed amendments to section B.2(I) of the AD Manual deal with the sections regarding the African allowance for authorised dealers and the meaning of foreign exposure for macro-prudential limit purposes; and
- The proposed amendments to section H of the AD Manual, involves the replacement of the existing section H. It sets out, amongst other things, the application procedure that needs to be followed –
 - in order for a qualifying issuer to obtain Excon approval to inward list an instrument on a South African exchange referencing foreign assets;
 - for requests for Excon approval to inward list a company's shares on a South African exchange for the purpose of raising capital; and
 - for requests for Excon approval to utilise inward listed shares as acquisition currency.

The way forward

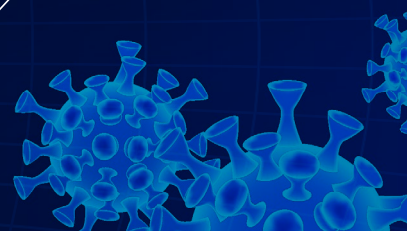
Along with the announcement that the Circular is suspended, the Media Statement indicates that stakeholders and the public are invited to submit comments to the SARB as to how the Circular should be amended. All comments must be sent to sarbportfolio@resbank.co.za by 15 December 2020. The Media Statement further states that input is also requested on the selling of a derivative or ETF where the underlying foreign asset is issued by a company not listed on a South African exchange.

Following the public consultation process, an amended version of the Circular will likely be issued. Hopefully, it will provide clarity regarding the issues raised by stakeholders and that resulted in the decision to suspend it.

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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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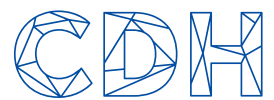
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