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TAX & EXCHANGE CONTROL **ALERT**

IN THIS **ISSUE**

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The expansion of the DTMC regime – a love letter to the South African business community?

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On 13 December 2019, the SARB issued Exchange Control Circular No. 19/2019, entitled *South African Domestic Treasury Management Company dispensation for African and offshore operations* (Circular). The Circular amended sections A.1 and B.2(E) of the Currency and Exchange Manual for Authorised Dealers (AD Manual), so that what was previously known as the HoldCo regime was replaced with an expanded, more clearly delineated Domestic Treasury Management Company (DTMC) regime.

Background

As discussed in our Tax & Exchange Control Alert of 23 March 2018, the South African government introduced the DTMC regime to enable South African companies, which are registered with the Financial Surveillance Department (FinSurv) of the South African Reserve Bank (SARB), to expand into the rest of Africa and abroad. It allows South African companies to establish one subsidiary within its group to hold African and offshore operations for foreign direct investment purposes.

Within the context of South Africa's exchange control (Excon) regime as a whole, the DTMC dispensation essentially constitutes an exception to certain provisions in the Exchange Control Regulations, 1961 (Regulations), including Regulation 10(1)(c). This provision states that transactions which result in the export of capital from the Republic may only be entered into with the permission of the SARB or an authorised dealer, and on such conditions as the SARB or an authorised dealer may impose.

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The expansion of the DTMC regime – a love letter to the South African business community?...*continued*

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Updates to the DTMC Regime

In the Circular, a number of changes have been announced. For example, the information required to be submitted to FinSurv for the granting of DTMC status has been expanded in the case of both listed and unlisted companies. When applying for registration as a DTMC with FinSurv, the following information must be disclosed in the application:

- names of the offshore target companies;
- a description of the types of business the DTMC will be involved in;
- jurisdictions in which the offshore companies are operating in;
- details of the envisaged investment;
- the equity and voting rights acquired in the foreign target entity; and
- an overview of the treasury management operations.

Restrictions on the cash management and cash pooling operations of DTMCs of listed and unlisted companies have been given more specificity, including:

- local income from treasury management operations is freely transferable offshore;
- excess cash derived from South African operations may be placed in the DTMC up to the current annual limit, together with cash derived from foreign operations;
- cash can be withdrawn from the DTMC to fund both foreign and local operations;
- intra-day cash pooling must be done on a funds-in funds-out basis and subject to specific reporting requirements; and
- inward loans within the group with a tenor of at least one month from the DTMC to local beneficiaries may be approved by authorised dealers, provided such transactions are permissible in terms of the AD Manual and must be reported accordingly.

DTMCs are also now allowed to enter into hedging transactions with foreign banks and/or authorised dealers, provided these are without recourse to South Africa.

Changes have been introduced regarding the amount that may be transferred abroad annually to the DTMC. It is still the case that authorised dealers may authorise transfers from South African parent companies to the DTMC up to R3 billion per calendar year in the case of listed companies, and up to R2 billion per calendar year, in the case of unlisted companies. However, companies can now apply for additional amounts to be transferred abroad.

In respect of listed companies, the Circular states that one may, in addition to the R3 billion limit per calendar year, apply to FinSurv to transfer amounts of up to 25% of the listed company's market capitalisation in a calendar year, which application will only be approved if the DTMC is able to demonstrate benefits to South Africa.

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In the case of unlisted companies, the Circular states that one can apply to FinSurv to transfer additional amounts to the DTMC, in excess of the R2 billion limit per calendar year.

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The New Financial Services Sector DTMCs

In line with Minister Mboweni's statement in the MTBPS, the DTMC regime has seen the inclusion of a specific financial services sector DTMC.

It appears that financial services sector DTMCs may have a slightly broader scope of operation, as the Circular states that companies operating in the financial services sector (i.e. registered banks and insurance companies) are able to undertake offshore operations for foreign direct investment purposes and domestic treasury management operations.

In respect of the transfer of amounts abroad to these DTMCs, the AD Manual states that FinSurv may authorise transfers from the parent company to the DTMC up to R3 billion per calendar year in respect of new investments, expansions as well as other transactions of a capital nature. There will be no restriction up to this amount on transfers in and out of the DTMC, provided that such transfers are not undertaken to avoid tax.

Transfers to financial services sector DTMCs above the R3 billion limit, are subject to approval by FinSurv and the Prudential Authority.

Observation

The broadening of the scope of the DTMC regime should be welcomed, as it will likely make it easier for holding companies incorporated in South Africa, to expand their activities abroad. From an Excon perspective, the changes to the DTMC regime have provided greater certainty about the nature of activities within the legitimate scope of DTMCs.

These changes may provide a platform for South African enterprises to access the increasingly open African market. Hopefully, it will also improve the growth trajectory of the South African economy.

Tsanga Mukumba and Louis Botha

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. 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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