



# Expat Tax Issues 2022 Series June / July August

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# Upfront disclaimer – current circulars

## SARB

- AD Manual 25 April 2022
- 2022
  - Circ 16 of 2022 latest
- 2021
  - Circ 1 of 2021 – an **updated revision is expected** between record date and 14 June 2022

## SARS

- Tax law amendments 2022
  - Where applicable we refer to draft changes for 2022, yet none of the TLAB suggestions were subject to public hearings

# Expatriate Tax Issues - 2022

- Session 1: **14 June 2022**
  - Excon update including loop update involving SA Trusts
- Session 2: **14 July 2022**
  - Now that I am tax non-resident how do I tax file
- Session 3: **11 August 2022**
  - Risks or pros & cons van tax number deregistration

# Acronyms

- AA Authorised Assets
- AD Authorised Dealer
- DTA Double Tax Agreement or treaty (Income Tax)
- Excon Exchange Control, however now FinSurv
- Excon resident SARB definition in AD Manual
- Emigrate Cease to be a resident ito ITA
- FE Formal Emigration using MP336(b) process
- FinSurv SARB Financial Surveillance Department
- ITA Income tax Act, 1961 as amended 2021
- **Resident** **SARB resident**
- SARB South African Reserve Bank
- SARS South African Revenue Service
- Tax Resident ITA Act section 1(1) definition “resident”

# Stop using *Excon Control* as a term?

Taken from [www.resbank.co.za](http://www.resbank.co.za) – the name of the department changed

**Exchange Control Circular No. 16-2022**

2021



# Session 1 of 3 – 14 June 2022

## Currency and Exchanges

- 2021 “Exchange Control Circulars”
  - 1 – Loops – note that a revision is imminent
  - 6; 8 to 11– ceasing residency
- 2022 “Exchange Control Circulars”
  - 4 to 13 - Annexure F (the 2022 policy on easing of Excon Control)
- Manual for Authorised Dealers dated 25 April 2022
  - <https://www.resbank.co.za/content/dam/sarb/what-we-do/financial-surveillance/financial-surveillancedocuments/2020/Currency%20and%20Exchanges%20Manual%20for%20Authorised%20Dealers.pdf>



**Non-resident** means a person (i.e. a natural person or legal entity) whose normal place of residence, domicile or registration is outside the CMA.

**Non-resident area** means all countries other than those included in the CMA.

**Non-resident Rand** means Rand to or from a non-resident account that may be deemed, in certain circumstances permissible elsewhere in the Authorised Dealer Manual, as an acceptable payment mechanism in lieu of foreign currency. It should be noted that non-resident Rand cannot in any manner be defined as foreign currency. It is purely Rand held in a non-resident account or Rand received from a non-resident source.

**Non-resident Rand account** means the Rand account of a non-resident conducted in the books of an Authorised Dealer.

## B.3 Income transfers

### (A) General

- (i) Transfers in respect of dividends, profits and current income accruing to non-residents of the CMA and private individuals who ceased to be residents for tax purposes in South Africa are subject to conditions laid down in subsection (B).
- Question: the word AND between non-residents of the CMA and private individuals who ceased to resident for tax purposes should perhaps have read:
    - non-residents of the CMA including private individuals that cease to be tax resident
  - Ceased to SA tax resident but living in the CMA?
    - Resident or non-resident for purposes of AD Manual
  - Where in the AD Manual does one find certainty that a person that ceased to be tax resident in now deemed an Excon Non- Resident?
  - How and when does SARS inform FinSurv one is tax non-resident? If so, how does FinSurv notify AD's as there is no longer a one AD only restrictions
    - Is the current uncertainty causing incorrect interpretation at AD level?
    - What about FE non-residents that did not require a TEC at the time – there was various exemptions over the years and TEC was later introduced





# Ceased to tax resident (ignoring 330 days)

## No longer ordinarily resident

- Excon non-resident – probably
- No SA Estate Duty unless SA situs assets
  - Domestic Policy Escapes as no one tracks
- Estate Duty s3(3)(d)
  - Expats in USA changed non-resident funder, founder and trustee's rights to massage USA throwback tax on non-USA trusts

## DTA or treaty non-resident

- Not Excon resident reading Excon rule below. Habitual treaty resident has a permanent home in SA
- Estate Duty on worldwide assets
  - Who is tracking? Not SARS as treaty non-resident reports only SA source and CGT on certain situs asset

## AD Manual:

Non-resident means a person (i.e. a natural person or legal entity) whose normal place of (ITA says habitual?) residence, domicile or registration is outside the CMA

**(B) Private individuals resident in South Africa**

- (i) Foreign investments by private individuals (natural persons) resident in South Africa
- (b) Authorised Dealers are advised that a valid green bar-coded South African identity document or a Smart identity document card is the only acceptable document proving residency in South Africa.



Above in B.2 where as resident definition is in A.1 yet AD's by default treats any born SA person, foreign national with SA ID (non-citizen but permanent resident for home affairs) as Excon Resident

- FE non-residents thus lost their Excon non-resident status until they have obtained recent TCS Pin TEC?
- FE era's TEC was a joke compared to current process as no TRC was required unless RA encashment was done
  - Asking SARS to re-confirm triggers request for TRC

## (A) Single discretionary allowance per calendar year

- (iv) The resident individual must produce a valid green bar-coded South African identity document or Smart identity document card for identification purposes and the identity number is mandatory when reporting the transaction in terms of the Reporting System.

### Identified abuse:

1. Private individuals having ceased to be SA tax residents, file TCS Pin TEC with AD ABC, year there after or even same calendar year they use AD XYZ via currency exchange agency and only file tax number and green bar coded or Smart ID.
2. Claim inactive in SARS system, remits R10m inheritance via executors AD. SARS letter contains old tax number, now use SA ID and inactive tax number at own AD and remits SDA R1m

No verification to central data basis to check Excon status or SARS tax status

FinSurv: do they monitor the SDA if all AD does not even ask for a SA tax number

# Time to align various tax acts and AD Manual

- Tax treaty non-residents and change tax status annually
  - Will SARS notify SARB FinSurv of failed emigration status?
  - Multiple bank accounts - no central register for AD's to compare notes
    - Once-off R100 000 dispensation – will FinSurv track abuse?
- Excon advisers agree the post FE compliance more complex and unfortunately most uncertain
  - SARB abdicated without National Treasury fully understanding the consequences?
  - National Treasury allowed apparent discord between SARB & SARS?



**Resident** means any person (i.e. a natural person or legal entity) who has taken up permanent residence, is domiciled or registered in South Africa. For the purpose of the Authorised Dealer Manual, this excludes any approved offshore investments held by South African residents outside the CMA. However, such entities are still subject to exchange control rules and the Regulations.

**Resident account** means the account of a person resident, domiciled or registered in South Africa, including that of a CMA resident.

**Resident temporarily abroad** means any resident who has departed from South Africa to any country outside the CMA with no intention of taking up residence or who has not been granted permanent residence in another country, excluding those residents who are abroad on holiday or business travel.



## **(J) Private individuals who cease to be residents for tax purposes**

- (i) The concept of emigration as recognised by the Financial Surveillance Department has now been phased out with effect from 2021-03-01.
- (ii) The distinction between South African resident assets and non-resident assets remains extant.
- (iii) Authorised Dealers may allow the transfer of assets abroad, provided a private individual:
  - (a) has ceased to be a resident for tax purposes in South Africa;
  - (b) has obtained a TCS in respect of “emigration” from SARS; and
  - (c) is tax compliant upon verification of the TCS.

# 2021 SARS Excon Circulars

- 1\_2021 Loop rules individuals and companies, not trusts and cc's
- 6\_2021 Emigration as Excon concept phased out
- 8\_2021 Update on 6\_2021, terminate SDA for tax non-residents
- 9\_2021 Section A.3(F) removed, impact AD's on FE /MP336(b) duties
- 10\_2021 Post tax emigration income
- 11-2021 Post tax emigration income form retirement funds



# 2022 SARS Excon Circulars

2_2022	Offshoring and cloud computing
4_2022	2022 statement on easing of Excon Control
5_2022	Individuals – export of multi-listed securities
6_2022	Online foreign exchange activities by residents
7_2022	Retention abroad of foreign gifts & Authorised Assets
8_2022	Capital transfers by resident individuals
9_2022	Inward listing on SA Exchanges
10_2022	SA institutional Investors
11_2022	FDI by SA companies – an update
12_2022	SA HoldCo for African and offshore operations (DTMC)
13_2022	Post tax emigration – once R100 000 no tax clearance





# Excon Circular No. 1/2021 – slide 1/5

Loop Structures - SA resident individuals, Corporate & Private Equity Fund

- No actual definition
  - B.2: “where South African assets are acquired through an offshore structure (loop structure)”
  - SARB FAQ Page
    - <https://www.resbank.co.za/en/home/what-we-do/financial-surveillance/FinSurvFAQ>
    - Resident individuals with authorised foreign assets may invest in South Africa, provided that where South African assets are acquired through an offshore structure (loop structure), the investment is reported to an Authorised Dealer as and when the transaction(s) is finalised as well as, inter alia, the submission of an annual progress report to the Financial Surveillance Department via an Authorised Dealer.
- 2016 SVDP rules
  - Was most recent “formal” guidance



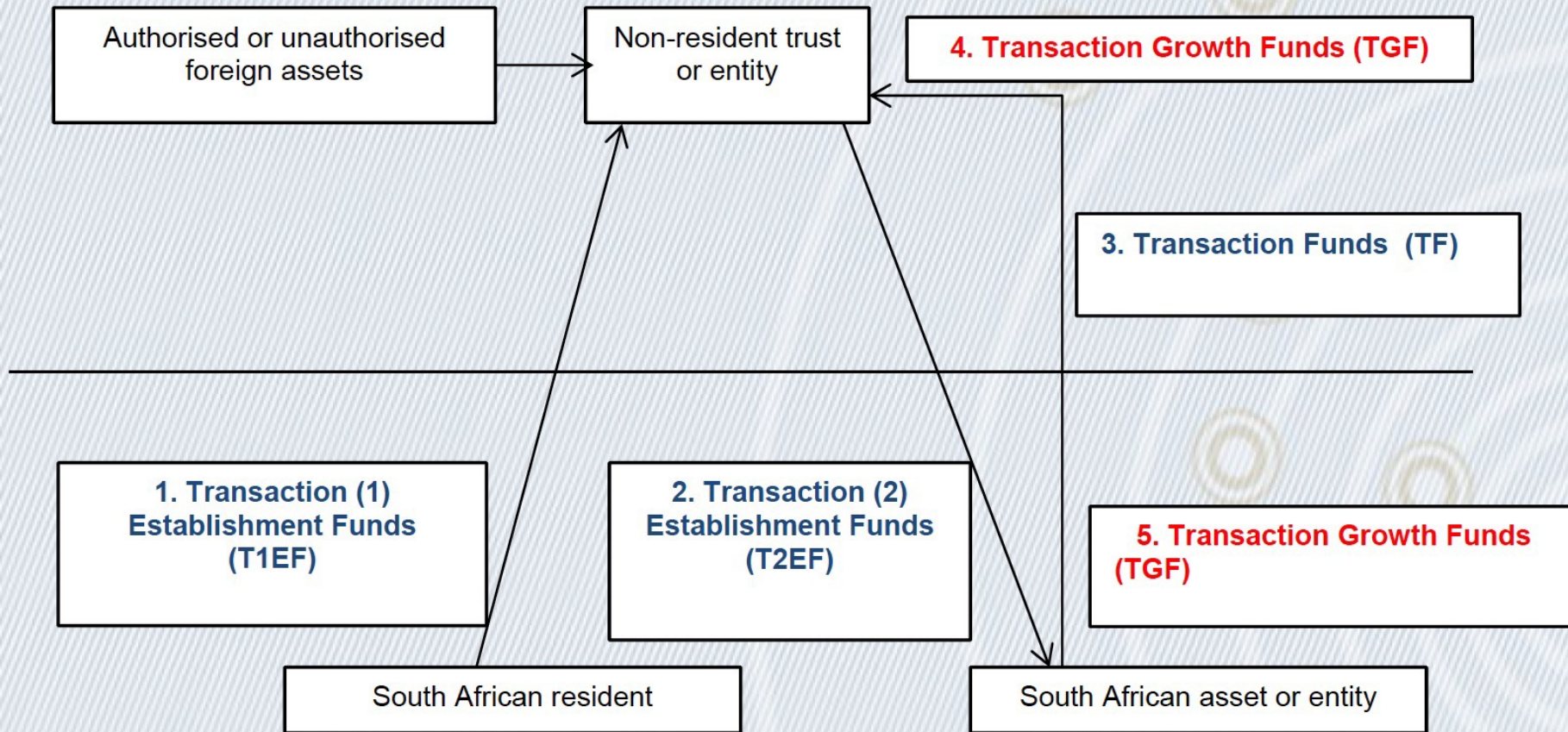


South African Reserve Bank  
Financial Surveillance Department  
(FinSurv SVDP Unit)

**17 November 2016**

**Exchange control Special Voluntary Disclosure Programme policy dealing with 'loop structures' (including 74/26 structures)**  
(to be read in conjunction with Exchange Control Circular 6/2016)

## D. 'Loop structure' process



# Loop description albeit not in AD Manual

## B. Description and legal status of 'loop structures'

- B.1 'Loop structures' entail the formation by a South African resident of an offshore structure which, by reinvestment into the Republic, acquires shares, loan accounts or some other interest in a South African resident company or a South African asset. These transactions, contravene, inter alia, Regulation 10(1)(c) of the Exchange Control Regulations, 1961.

# Excon Circular No. 1/2021 – slide 2/5

Loop Structures – SA resident individuals, Corporate & Private Equity Fund

- Circ 1 out of date
  - Was issued whilst Excon non-resident referred to formal emigrant (MP336(b) process which did not include current TEC process) and foreign nationals albeit temporarily resident in SA
  - The foreign inheritance rules on last two pages, now outdated - refer 7\_2022
- Does not allow SA trusts an effectively no CC as FDI can only be done by SA company
  - Excon corporate does not include a close corporations or CC
    - No rule in Ad Manual but based on past experience
    - Member fees (member's salary) may however be remitted abroad in most cases



# Excon Circular No. 1/2021 – slide 3/5

Loop Structures - SA resident individuals, Corporate & Private Equity Fund

1. Loop from AA assets only, yet effective date 1 Jan 2021 and all prior unauthorised loops are to be regularised
2. Inward loans (even if from SA affiliate) must comply with section 1.3(B)
  - Authorised Dealers may approve applications by residents, to avail of inward foreign loans and foreign trade finance facilities from any non-resident, subject to the specific criteria applicable to inward foreign loans being adhered to and that such loans are recorded via the Loan Reporting System.
  - Example: Loan more than one month from third part
    - the interest rate may not exceed the base lending rate plus 3 per cent or,
    - in the case of shareholders' loans,
    - the country base lending rate of the currency denomination used



# Excon Circular No. 1/2021 – slide 4/5

Loop Structures - SA resident individuals, Corporate & Private Equity Fund  
Information required on transaction finalization & annual progress report

1. Name and info on the SA affiliated foreign investor
2. Description of asset or SA target company
3. Date of acquisition
4. Foreign currency introduced – no ZA Rand remittance allowed
5. Inward transfer transaction reference and conversion
6. Inward loan detail and prior approval (thus before Loop reporting)
7. Independent auditors written confirmation or documentary evidence verifying transaction value was arm's length



# Excon Circular No. 1/2021 – slide 5/5

Loop Structures - SA resident individuals, Corporate & Private Equity Fund

Expected revision

- AD's are declining (if that is possible) loop's being placed on record because there is an opinion that Circ 1-2022 was not intended to allow South African residents (individuals and corporates) to restructure, re-domicile or externalise to a foreign jurisdiction, **in any manner whatsoever**, control over and/or the beneficial ownership of any existing local assets directly/indirectly owned by such a resident."
- Retained income prior to loop = capital
  - AD's does not allow new shareholder to receive dividends unless from post loop creation date
  - Yet the foreign buyer had to pay arm's length price which should have included retained income?
  - Loop acquisition should ex-div but will AD understand value decrease?
    - Reducing SARSCGT collection due to forced value decrease?
  - AD ignores additional DWT collected by SARS as seller is often SA HoldCo, that would have escaped DWT





# Excon Circular No. 6/2021- 26 Feb 21

Emigration as SARB concept being phased out 1 March 2021

- “all applications by individuals in excess of SDA threshold, require. Tax Compliance Status (TCS)” Pin –TCS Pin FIA
  - Then 21 May 2021 Circ 8\_2021 removes the SDA from persons having ceased tax residency “may in the same calendar year as they ceased to be residents transfer via AD up to R1m **as travel allowance**, without TCS Pin.
- A. Note SDA FIA no TCS AD converts to foreign currency, yet TA may be sent in ZAR
  - “This is a once-off dispensation and cannot be used in subsequent calendar years.
  - “Private individuals ceasing to be residents for tax purposes only qualify for the aforementioned travel allowance and may not avail to any unutilized portion of the SDA available to resident.”
    - It is indeed possible to avail to travel allowance whilst not in SA, ad where the initial trip extends into the next calendar year
    - Experience: AD grants SDA and not Travel allowance as they allow the fund transfer to a third party’s bank account. TA can be transferred abroad but only the traveler's owns account



# Excon Circular No. 6/2021 vs 8/2021- 1/2

## 6\_2021

- MP336(b) FE 28 Feb 21 only
- TCS Pin FIA R10 SARS
  - In excess of R10m – SARB
- Blocked funds account became non-resident account
  - TCS pin FIA for remaining blocked assets
- RA “benefits” if non-res 3 uninterrupted years and TD was issued
- Resident and non-resident assets retained

## 8\_2021

- AD may transfer assets abroad, once TCS Pin
- TEC was obtained and tax compliant “upon verification” – assume transfer date
  - See B.2(J)(ix) – all remaining assets FIA to transfer abroad
- RA - 3 year now only iro capital lumpsum not income
- TA (in ZAR) in same calendar year and in additional NEP value increased to R1m value treated as cash, if on TEC balance sheet

# Excon Circular No. 6/2021 vs 8/2021- 2/2

## 6\_2021

- All new emigration related applix, as of 1 March 2021, dealt with by SARS
  - SARS abdicated?
  - Easier or more complex system
- Post FE assets subject to foreign capital transfer rules
  - Non-resident domestic assets will be freely transferable subject to TCS Pin
  - Non-resident externalise listed and unlisted shares in lieu of FIA Cash
- Natural persons resident and non-resident treated identically
- Non-resident transfer FIA >R10m, SARS process
  - Source of funds, anti-money laundering, anti-terrorism

## 8\_2021

- Inheritance or life insurance up to R10m no TCS Pin if inactive on SARS.
  - Practical challenge
  - AD wants proof that inactive on SARS
- In excess of R10m, manual letter of compliance
  - Less f challenge SARS very quick
- IV trust – income and capital distributions may be transferred abroad, subject to TCS Pin by the “trustees of the trust”
- Pre-Inheritance FIA by donor
- Post emigration assets i.e. non-resident assets per SARS based on SARS TCR01 for TEC Pin
- TCS Pin Expired – new applix no longer refers

# Circular 9 of 2021

Section 3 A.3(F) deleted

AD can't process MP336(b) –  
mandated removed - in basic  
English

**#RIP Financial Emigration**

# Circular 10 of 2021- individuals

## Post tax emigration: Income transfers

- Transfers of dividends, profit and current income (being net-income) accruing to nonresidents and individuals having ceased tax residence
  - Local liability including SARS dealt with
  - TCS good standing once a year
    - Capital is TC Pin FIA
- Transfer of pension and retirement annuities (LA) can be paid to person temporarily abroad

- (g) Residents temporarily abroad may receive pension and retirement annuities as mentioned in section B.3(A)(iv) of the Authorised Dealer Manual as well as monetary gifts and loans as mentioned in subsection (A)(x) above, however, no other foreign currency may be availed of without the specific prior written approval of the Financial Surveillance Department.

# 10\_2021- Income from trusts & Co

## Testamentary and inter vivo trusts

- AD may allow the transfer of income **to any non-resident**
- <R10m – TCS Good standing
- >R10m FIA – **but see next slide, SARS says NO**

## Salaries and fees

- AD may allow the transfer of salaries and/or fees payable to bona fide non-residents and private individuals who ceased to be residents for tax purposes in South Africa,
  - provided these individuals are unrelated parties and the services are rendered from abroad.
- AD Applix on Co letterhead for payments to related parties.

# Exchange Control Circulars 2022

## PRE- BUDGET'S ANNEXURE F

2-2022 – offshoring and cloud computing request will be considered

- Conflicts with tax Administration Act or refinement?
- Only iro business processes and cloud storage related to FinSurv business process and documents
- Data is cross-border transactional data and digital. Images of documents
- Offshoring is transferring the business process iro Excon compliance and data to reporting branches or Head offices outside SA
- Not to relevant for individuals but assist to understand why Sa Ad must be used
  - Foreign currency agencies transferring in, provides underquote info
  - Local AD's equally guilty – fails to ask their clients for correct data or ignores the client info
- Ensure all your AD's on same page
  - **Old day only one AD post FE, now multiple AD's and funds remitted in by non-compliant or ignorant banks**



# 11\_2021 –income from retirement funds

Post emigration – ceased to be resident on or after 1 March 2021

- Capital – 3 consecutive years as non-resident
- Income –from registered funds
  - Can flow based on TCS good standing
  - **no TCS TEC PIN**
    - as temporary abroad residents can also remit abroad

# SARB and SARS in conflict?

## Distribution of funds to non-resident trusts by resident trusts

8 April 2022 – It has been the practice of SARS not to approve the release of funds when resident Trusts make distributions to non-resident Trusts. Following numerous queries in this regard, SARS herewith re-iterates its stance on the matter and herewith confirms that it will not approve the release of funds vested and distributed to non-resident Trusts.

SARS is currently investigating other options related to the distribution of funds/amounts to non-residents and is in discussions in this regard. SARS takes note of the fact that the SARB has relaxed certain exchange control requirements but has decided, based on the risks involved, not to approve the release of funds to non-resident Trusts.

This does, however, not preclude a resident Trust from vesting amounts in non-resident individuals and to apply for the relevant approvals, as per the current approved practice.



----- Forwarded message -----

Van: <forex@>

Date: di 17 mei 2022 om 00:52

Subject: RE: Change of BOP

To:

Good day Sir / Madam

We refer to your email and note according to our record you are still regarded as SA resident

Therefore the BOP 03 (Salary paid by a resident to a resident employee temporarily abroad)

is the correct BOP to use1

Kind regards

## Income receipts

- 301 Dividends
- 302 Branch profits
- 303 Compensation paid by a non-resident to a resident employee temporarily abroad (excluding remittances)
- 304 Compensation paid by a non-resident to a non-resident employee in South Africa (excluding remittances)
- 305 Compensation paid by a non-resident to a migrant worker employee (excluding remittances)



# 4\_2022

SARB statement on exchange control

- Placing National Treasury(NT) Policy on record as SARB policy
- Circulars that follow, refines the policy and translate NT policy into practical AD process and compliance testing

# 5\_2022 – Export of multi-listed securities

- Previously restricted to individuals ceasing tax residency
- Now any resident may avail to SDA or FIA to export or transfer shares from SA exchange to foreign securities register
- Circular explains non-cash transfer process, rules and requirements
- No surprise >R10m follow the new SARB process

# 6\_2022 Online Trading Residents

Include one or combination of

- Trading global currencies
- Trading contract for difference
- Trading in foreign stocks
- Trading Commodities; including
  - **Crypto currencies** (? Not crypto assets)
  - Trading foreign indices

Using online platforms or brokers

- SDA & FIA funding allowed provided AD converts ZAR to foreign currency;
- **may NOT** fund their international trading accounts at registered brokers **using SA credit, debit or virtual cards**

# 6\_2022 Crypto Currencies

- Crypto Currency used throughout
- All other SARB publications refer to Crypto Assets and previously virtual currencies
- AD Manual does not allow for cross-border or foreign exchange transfers for the explicit purpose of purchasing crypto assets.
- From an exchange control perspective, the Financial Surveillance Department is unable to approve any transactions of this nature.
  - SDA and FIA may be used but not debit, credit or virtual cards i.e. can't abuse the daily card allowance
  - Residents are permitted to make **permissible** foreign currency payments for small transactions (e.g. imports over the Internet), by means of such credit and/or debit cards.
    - Payments are limited to R50 000 per transaction.
    - Any singular transaction exceeding R50 000 may not be split to circumvent the limit applicable to this dispensation
  - Not permissible is lottery, online trading and crypto currency
    - NFT? Crypto Asset not a true Crypto Currency?

## **(F) Foreign lottery tickets and gambling activities**

- (i) Residents may not participate in lotteries organised abroad as such participation contravenes the Lotteries Act, 1997 (Act No. 57 of 1997).
- (ii) In terms of the National Gambling Act, 2004 (Act No. 7 of 2004), as amended by the National Gambling Amendment Act, 2008 (Act No. 10 of 2008), residents may not participate in any gambling activities not authorised in terms of the aforementioned Act.
- (iii) Accordingly, Authorised Dealers must decline requests to purchase foreign currency for such purposes in all instances.
- (iv) Residents may not use their credit and/or debit cards in South Africa to facilitate payments for the above-mentioned purposes. In addition all issuers of American Express, Diners Club, MasterCard and Visa cards may not accept such debits against resident cardholder's accounts in respect of the payment for foreign lottery tickets or online gambling activities.





# 7\_2022 Retention abroad gifts and AA

Circ. 1-2021 amended but not retrospectively **effective 23 Feb 2022**

**Subject to local tax disclosure and compliance by both parties  
(CGT and donations tax)**

- Foreign Assets inherited from local deceased estates
- AA held by residents may now be advanced or disposed of to local residents
- On ITR12 disclose tax free donation received

**Also amends immigrants' compliance**

**Past transgressions must be regularised**



# Gifts received prior to 23 Feb 2022

## (C) Gifts and/or donations from non-residents

- (i) Any foreign asset received by a resident from a non-resident as a gift or donation on or after 2022-02-23 is exempted from the provisions of Regulations 6 and 7, subject to local tax disclosure and compliance.
- (ii) Contraventions that occurred before 2022-02-23 must still be regularised with the Financial Surveillance Department.

**Past experience:** Foreign parents of immigrants or emigrated parents of residents, often donate assets during their lifetime (specifically in compliance with Sharia Law, to benefit wives or other family in SA). Pre-Inheritance gifts could never have been left abroad. Very few immigrants and born residents were aware of this. **Please regularise!!!**

# 8\_2022 Residents – Capital Transfers

Residents – note tax reporting rules has NOT changed

FIA rules in the past:

- First R10m no restrictions
- >R10m per calendar year – remained SA Excon controlled assets, invest own name
  - No investment via foreign entities, specifically foreign domiciled and (or?) registered trust

New Rules as of 23 February 2022

- >R10m (same or previous calendar year) may now invest via foreign domiciled and (or) registered trusts

# 9\_2022 – Inward listing on SA Exchanges

- Not specific to Expats, included as indication of capital flow monitoring
  - Yet bona fide non-residents can invest therein as well as SA companies, SA Trust, SA resident individuals and partnerships
- Foreign referenced assets or instruments sold to residents must be listed, no OTC.
  - Listing requirement includes FinSurv approval
  - May not be used to
    - re-domicile SA company
    - offshoring a SA company
- Policy is based on liquidity and diversification/foreign exposure iro investments whilst investing onshore
  - Allows SA Trusts an alternative to assets swaps
  - Brokers may warehouse new foreign acquisitions for max 30 days and all expansion to be pre-approved

# 9\_2021 – Example Inward Listed Instruments

- Ordinary shares, A, B and N – settled in ZA Rand
- Preference shares – existing listed co, and compulsory conversion
- Linked units, REITS and loan stock – provided primary or secondary listed in SA
- ETF – exchange traded funds tracking SA basket
- Warrants and Share instalments
- Various equity and commodity derivatives – SA listed and ZA Rand traded, for every buyer there must be a seller
- Kurgerrand coins – ZA traded

# 10\_2022 Intuitional Investors

- Does not speak to expats and emigration process
- May only dispose of assets to nonresidents and other qualifying institutional investors, FOR CASH
  - No fancy section 41—47 corporate roll over transactions
  - No restructuring to allow for offshoring of SA companies
- Prudential limits lifted but strictly applied

# 11\_2022 – FDI SA Companies

- Expats, non-residents and persons having ceased tax residency impacts as they may own shares in SA Excon resident companies
- Excess income or profits in offshore branches and offices of SA companies may be retained offshore, provided annual reporting – reg 6 exemption
- FDI outside current line of business approval by AD: increased limit to R5billion (was R1billion) per applicant company
  - Bona fide new outward foreign investment into foreign companies, foreign branches and offices outside SA
    - As well as future foreign expansion by target company
- FDI restrictions in excess of R1billion, now only applies to FDI in excess of R5billion
  - Outside current line of business retained
  - Applications must be referred to FinSurv

**(E) South African holding company for African and offshore operations**

**(i) Listed companies**

(a) Companies listed on a South African exchange may establish one subsidiary within the group known as a DTMC to hold African and offshore operations for foreign direct investment purposes.

(b) For the purposes of this section, the DTMC is treated as a non-resident company for reporting and monitoring purposes even though it is a South African tax resident, which is incorporated in South Africa, has its place of effective management in South Africa and will be subject to the following conditions:

(aa) the DTMC must register with the Financial Surveillance Department;



# 12\_2022 SA HoldCo for African and Offshore Operations

- Does not directly impact expats and individuals that ceased to be tax resident
- Listed company transfer to DTMC limit increased to R5billion was R3billion
  - No in-out transfer restrictions provided not tax avoidance driven
- Unlisted company can transfer R3billion (was R2billion)
  - Not the same in-out transfer freedom
- Funds maybe used for new investments and expansions

# 13\_2022 – R100k trf non-residents

- Impacts only individuals that have ceased to be tax residents
  - AD's often restrict to past FE applicants
    - Did they really correctly cease tax residency?
- Once of dispensation
- Where as private individual ceased to be resident in SA for tax purposes and has a total remaining **cash balance not exceeding R100 000**, the AD concerned may remit abroad, on a once-off basis, **the remaining cash balance** without reference to SARS
  - Close the account!
  - Make your tax profile inactive to ensure R10m inheritance rules but ensure you have the necessary letter from SARS
    - Current letter not adequate?

# Gifts – receiving gifts not from a trust

(g) Residents temporarily abroad may receive pension and retirement annuities as mentioned in section B.3(A)(iv) of the Authorised Dealer Manual as well as monetary gifts and loans as mentioned in subsection (A)(x) above, however, no other foreign currency may be availed of without the specific prior written approval of the Financial Surveillance Department.

**(B) Dispensation for residents**

(i) Authorised Dealers may purchase foreign bank notes from residents who received the foreign bank notes from visitors to South Africa as payment for services rendered, gratuities, tips or gifts.



# Gifts – does this include trust distributions

- (xii) All assets that were previously blocked as per a specific directive that was given by the Financial Surveillance Department in terms of the provisions of Exchange Control Regulation 4(2), may be dealt with as follows:
- (a) In respect of income and capital distributions from inter vivos trusts, such distributions may be transferred abroad, subject to the TCS process being completed by the trustees of the trust. For any transfers above R10 million, the requirements of (vii) above will apply.
  - (b) With regard to pre-inheritance gifts, such funds may be transferred abroad, subject to the TCS process being completed by the resident donor. For any transfers above R10 million, the requirements of (vii) above will apply.

**AD Manual B2**

**(A) Single discretionary allowance per calendar year**

- (i) Residents (natural persons) who are 18 years and older may be permitted to avail of a single discretionary allowance within an overall limit of R1 million per individual per calendar year without the requirement to obtain a TCS PIN letter, which may be used for any legal purpose abroad (including for investment purposes as well as the sending of gift parcels in lieu of cash excluding gold and jewellery). Authorised Dealers must ensure that the purpose for which the funds are used abroad must be reported under the correct category on the FinSurv Reporting System.

Past experience: Africana (art, vehicles) not allowed without third party approval, Arts & Culture

- (x) Authorised Dealers may allow resident individuals to transfer monetary gifts and loans within the single discretionary allowance limit of R1 million per applicant during a calendar year to non-resident individuals and to resident individuals who are overseas temporarily, excluding those residents who are abroad on holiday or business travel.
- (xi) In addition to monetary gifts, residents may export Krugerrand coins or the equivalent in fractional Krugerrand coins up to an amount of R30 000 as gifts to non-residents subject to the completion of the prescribed SARS Customs Declaration.

# Capital Distributions from a SA Trust?

Capital distributions from local testamentary trusts| due to non-residents may be remitted abroad, provided that the trustees resolution confirming the capital distribution and the Last Will and Testament confirming that the beneficiary is entitled to such capital distribution, have been viewed. Distributions as a result of the renunciation of a beneficiary's right to capital of a testamentary trust must be referred to the Financial Surveillance Department.

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**(B) Income due to non-residents and private individuals who cease to be residents for tax purposes in South Africa**

(iv) Income from trusts

(a) Trusts created in terms of a Last Will and Testament

(aa) Authorised Dealers may allow the transfer of income.

(b) Inter vivos trusts

(aa) Authorised Dealers may allow the transfer of income.

(c) In respect of the aforementioned, Authorised Dealers must require a TCS of good standing at least once a year on applications up to R10 million and a tax compliance status request – TCS FIA for



## Emigrants

530	01	Emigration foreign capital allowance – fixed property
530	02	Emigration foreign capital allowance – listed investments
530	03	Emigration foreign capital allowance – unlisted investments
530	04	Emigration foreign capital allowance – insurance policies
530	05	Emigration foreign capital allowance – cash
530	06	Emigration foreign capital allowance – debtors
530	07	Emigration foreign capital allowance – capital distribution from trusts
530	08	Emigration foreign capital allowance – other assets
531		Not allocated

# Trust – Rules re Local and Foreign Trust

Excon refers to a trust operating in SA

- AD manual does refer to and rely on documents from Master of the High Court, but for local trusts, there is no Excon obligation to register a foreign trust operating in SA, with Master of High Court
- Do note that any SA operation will trigger Excon rules as if the trust is a resident and therefore SARS tax number, TCS Pin Process etc is advisable
- Intention was probably partnerships operating in SA yet we have seen trust companies and administrators registering so-called Onshore Offshore Trust
  - Foreign trust effectively managed from SA thus SA tax resident, but as no SA assets some argued no registration at Master's office
    - Tax benefit was step up in base cost iro foreign assets, as it's a tax immigration

**Affected person** means a body corporate, foundation, trust or partnership operating in South Africa, or an estate, in respect of which:

**Affected person** means a body corporate, foundation, trust or partnership operating in South Africa, or an estate, in respect of which:

- (i) 75 per cent or more of the capital, assets or earnings thereof may be utilised for payment to, or to the benefit in any manner of, any person who is not resident in South Africa; or
- (ii) 75 per cent or more of the voting securities, voting power, power of control, capital, assets or earnings thereof, are directly or indirectly vested in, or controlled by or on behalf of, any person who is not resident in South Africa.



Who is monitoring this?

- (m) The Financial Surveillance Department will consider applications by private individuals who wish to invest in excess of the R10 million foreign capital allowance limit, in different asset classes. Such investments, if approved, could be facilitated via a foreign domiciled and registered trust. This dispensation would also apply to private individuals who have existing authorised foreign assets, irrespective of the value thereof. In terms of the TCS system, a TCS PIN letter will be issued to the taxpayer that will contain the tax number and TCS PIN. Authorised Dealers must use the TCS PIN to verify the taxpayer's tax compliance status via SARS eFiling prior to effecting any transfers. Authorised Dealers should note that the TCS PIN can expire and should the Authorised Dealers find that the TCS PIN has indeed expired, then the Authorised Dealer must insist on a new TCS PIN to verify the taxpayer's tax compliance.

**(K) Legacies and distributions from deceased estates and testamentary trusts**

**(i) Estates of residents**

- (a) Cash bequests and the cash proceeds of legacies and distributions from resident estates due to non-resident private individuals, non-resident entities and/or trusts, may be remitted abroad, provided that the Liquidation and Distribution Account bearing a Master of the High Court reference number has been viewed.
- (b) In cases where the total assets of the resident estate is less than R250 000, cash bequests and the cash proceeds of legacies due to non-resident private individuals, non-resident entities and/or trusts, may be remitted abroad, provided that the Last Will and Testament and Letter of Executorship or Authority have been viewed.
- (c) In all cases where such a resident estate holds authorised foreign assets, distribution of the foreign assets may be effected to non-residents, provided that all foreign administrative and related costs have been met from the foreign portion of the estate.

# SARB and SARS in conflict?

## **Distribution of funds to non-resident trusts by resident trusts**

8 April 2022 – It has been the practice of SARS not to approve the release of funds when resident Trusts make distributions to non-resident Trusts. Following numerous queries in this regard, SARS herewith re-iterates its stance on the matter and herewith confirms that it will not approve the release of funds vested and distributed to non-resident Trusts.

SARS is currently investigating other options related to the distribution of funds/amounts to non-residents and is in discussions in this regard. SARS takes note of the fact that the SARB has relaxed certain exchange control requirements but has decided, based on the risks involved, not to approve the release of funds to non-resident Trusts.

This does, however, not preclude a resident Trust from vesting amounts in non-resident individuals and to apply for the relevant approvals, as per the current approved practice.





**WEGKANER**

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***THANK YOU***  
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