



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)

A. Parties who may apply

A.1 Natural persons, South African resident trusts and corporate entities who created so-called 'loop structures' into the Republic of South Africa (the Republic) on or before 29 February 2016 may submit an exchange control Special Voluntary Disclosure Programme (SVDP) (hereinafter exchange control SVDP) application, in terms of Regulation 24 of the Exchange Control Regulations, 1961, as amended. Reinvestment in, or 'loops' into, other Common Monetary Area (CMA) countries such as Lesotho, Namibia and Swaziland do not qualify under the exchange control SVDP.

B. Description and legal status of 'loop structures'

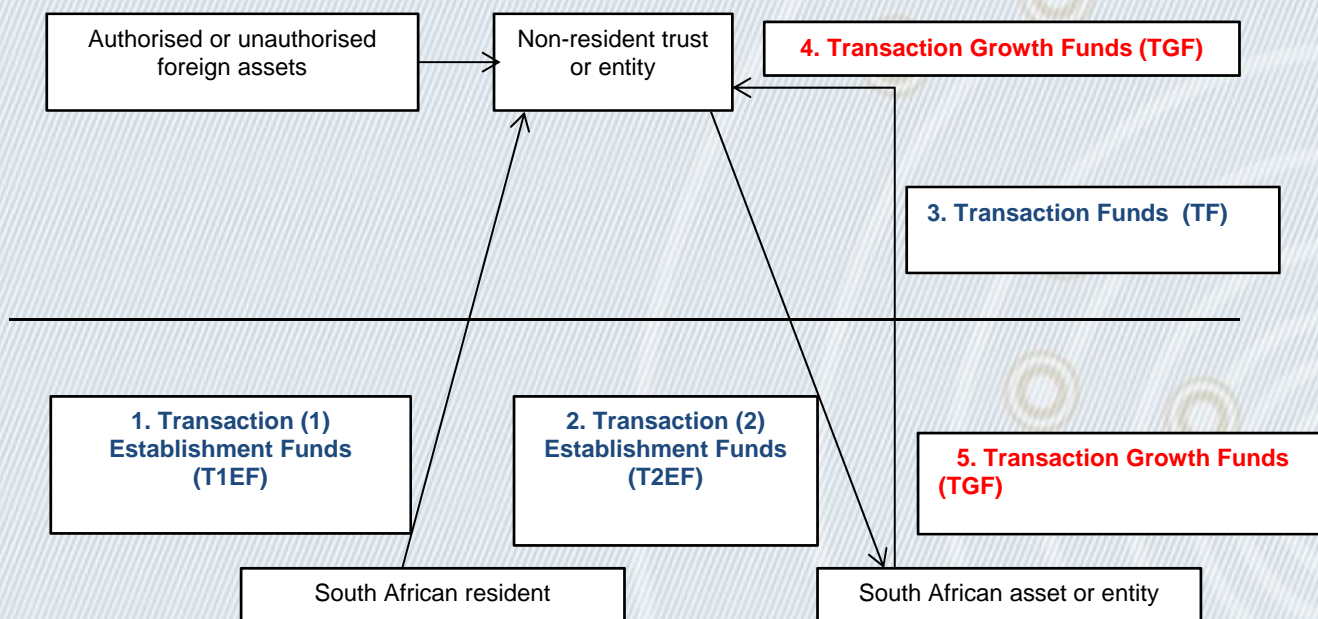
B.1 'Loop structures' entail the formation by a South African resident of an offshore structure which, by reinvestment into the Republic, acquires shares, loan accounts or some other interest in a South African resident company or a South African asset. These transactions, contravene, inter alia, Regulation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

C. Transactions involved in establishing 'loop structures'

C.1 A South African resident individual, trust or corporate entity transfers authorised or unauthorised funds (could also be existing offshore funds or a combination thereof) from the Republic to set up, for example, a foreign trust or foreign entity. This leg is referred to as '**Transaction (1) Establishment Funds**'.

- C.2 The foreign trust or entity involved would then directly or indirectly (via another offshore entity) reinvest its authorised or unauthorised funds in the Republic, thereby creating the 'loop structure'. The reinvestment could inter alia be in the form of South African shares, assets or loan accounts being acquired or created. This inward leg using authorised or unauthorised funds or a combination thereof is referred to as **'Transaction (2) Establishment Funds'**.
- C.3 The South African resident would in some instances thereafter export returns made on the South African investment inter alia by way of dividends, profits, interest and/or loans repaid to the foreign structure. This outward leg is referred to as **'Transaction Funds'**.
- C.4 The 'Transaction (2) Establishment Funds' referred to in point C.2 above and the 'Transaction Funds' referred to in point C.3 above may, as a consequence of their investment locally or other economic application offshore, have resulted in an accumulation of value (growth) over and above the nominal value of these 'Transaction Funds'. This leg is referred to as **'Transaction Growth Funds'**.

D. 'Loop structure' process



E. Analysis of contraventions that can occur in respect of 'loop structures'

- E.1 'Transaction (1) Establishment Funds' under point C.1 above, if created with unauthorised local or offshore funds, constitute a contravention of Regulation 10(1)(c) of the Exchange Control Regulations, 1961. The reason for this is that unauthorised local funds may not be exported from the Republic nor may unauthorised foreign funds be used offshore without prior regulatory approval.
- E.2 'Transaction (2) Establishment Funds' under point C.2 above constitute a contravention of Regulation 10(1)(c) of the Exchange Control Regulations, 1961. The reason for this is that 'loop structures' are contrary to the current exchange control policy in force.
- E.3 'Transaction Funds' under point C.3 above constitute a contravention of Regulation 10(1)(c) of the Exchange Control Regulations, 1961. The reason for this is that the export of funds or the right thereto through 'loop structures', not approved by the regulatory authority, is contrary to the exchange control policy in force.
- E.4 'Transaction Growth Funds' on the funds referred to under points C.2 and C.3 above constitute contraventions of Regulation 10(1)(c) of the Exchange Control Regulations, 1961. The reason for this is that the growth achieved on unauthorised assets held offshore and via 'loop structures' in the Republic are contrary to the exchange control policy in force.

F. What applicants need to disclose via Efiling

- F.1 The following information needs to be disclosed in an attachment to the exchange control SVDP application form to be submitted via SARS efilng:
- F.1.1 Where applicable, the transaction date(s) on which, and the amount(s) originally exported from the Republic or offshore funds used to set up the foreign structure. Full disclosure of whether the 'Transaction (1) Establishment Funds' were authorised or unauthorised funds must occur.
- F.1.2 The transaction date(s) on which, and the amount(s) used to reinvest in, the

Republic and full details of the investment(s) made. These funds represent 'Transaction (2) Establishment Funds'.

F.1.3 The transaction date(s) on which, and the amount(s) of capital and income exported from the Republic to the offshore structure, namely dividends, profits, interest and/or loans repaid. These funds represent 'Transaction Funds'.

F.1.4 The market value of the assets acquired in the Republic under point F.1.2 above as at 29 February 2016 and in respect of any funds exported under point F.1.3 above, the market value of such exported assets also as at 29 February 2016. The difference in the values disclosed under F.1.2 and F.1.3 above and the market values disclosed in this sub section, represent the 'Transaction Growth Funds'.

G. Special rules for donor(s) or funder(s) of discretionary trusts

G.1 South African residents who are donor(s) or funder(s) (or the deceased estate of a donor or funder) in relation to a foreign offshore discretionary trust, which trust is not a resident, may elect that any foreign asset(s) that was held by that foreign discretionary trust on 29 February 2016, be deemed to be held by these resident(s).

G.1.1 Point G.1 above applies in respect of a foreign asset of a foreign discretionary trust, which was acquired by that discretionary trust by way of a direct/indirect donation, loan and/or any other contribution made by the South African resident contemplated in point G.1 above;

G.1.2 has been wholly or partly derived from any unauthorised foreign asset or from any amount not declared by the donor(s) or funder(s) to the Commissioner as required by the Estate Duty Act, 1955 (Act No. 45 of 1955) or the Income Tax Act, 1962 (Act No. 58 of 1962); and

G.1.3 has not at the time of that election vested in any beneficiary of that discretionary trust.

G.2 Where a resident has made an election as contemplated in point G.1 above in relation to a foreign asset, that resident will be deemed to have held the foreign asset for purposes of administrative relief under the exchange control SVDP, from

the date on which the discretionary trust acquired that foreign asset until that foreign asset is disposed of by that discretionary trust to any other person; in which case, that person shall be deemed to have disposed of that foreign asset for consideration equal to its market value on the date of disposal.

G.3 In order to make the election contemplated in point G.1 above, the resident must apply for administrative relief before 30 June 2017 and must submit the founding documentation (including any amendments, codicils and addendums) of the discretionary trust as at 29 February 2016, together with the relevant, prescribed, supporting documents and signed exchange control SVDP application form to be submitted via SARS e-filing.

H. Example: How to calculate the levies payable on 'loop structures'

H.1 Double counting is, where possible, eliminated when calculating exchange control SVDP levies. (Where market values as at 29 February 2016 are lower than actual values earlier invested in or earlier actual values of funds exported from the Republic, the higher actual values will be used to calculate any levies that might be payable). Applicants who are granted administrative relief, as provided for in terms of Regulation 24, in respect of unauthorised foreign assets and/or structures declared, will have to pay an exchange control SVDP levy of **5 or 10 per cent** (dependent on how the loop structure is unwound and whether the unauthorised assets are repatriated or not), as calculated in the following example:

H1.1 **USD 1000** was exported as a travel allowance from the Republic during 1999 and was used in 2000 as the '**Transaction (1) Establishment Funds**' to set up the offshore structure (in this instance a foreign trust) (Unused travel allowances retained abroad or travel allowances used for purposes other than travel are, of course, unauthorised funds).

H1.2 The **USD 1000** exported in point H1.1 above and an additional **USD 1000** retained abroad as a legal foreign capital allowance were donated by a SA resident to the foreign trust, who in 2001 irregularly reinvested the total amount of **USD 2000** in a portfolio of assets in the Republic as '**Transaction (2) Establishment Funds**'. This, of course created the illegal 'loop structure'.

H1.3 **USD 300** in total was exported from the Republic over the years until February 2016 as a return on the investment made in the Republic. This could have been done by way of dividends, profits, interest and/or loan repayments which amount represent the **'Transaction Funds'**.

H1.4 As at 29 February 2016, the **USD 2000** invested (see H1.2 above) in the Republic had a market value of **R 50 000** and the **USD 300** in funds exported (see H.1.3 above) were reinvested abroad and had a market value of **USD 500**. The net increase in the value of both the aforementioned amounts is deemed to be the **'Transaction Growth Funds'** and can be calculated as follows:

a) Growth on capital originally invested

Market value = (R 50 000 X 0.0620 \$/ZAR exchange rate as at 29 Feb. 2016) = USD 3 100
 Less Actual Transaction (2) Establishment Funds originally invested = USD 2 000
 Difference represents **Transaction Growth Funds** = USD 1 100

b) Growth on funds exported from Republic

Market value as at 29 Feb. 2016 of funds exported = USD 500
 Less actual Amount exported from the Republic up to 29 Feb. 2016 = USD 300
 Difference represents **Transaction Growth Funds** = USD 200

H1.5 The trustee(s) of the foreign trust that owns the portfolio in the Republic has a number of options to unwind the loop structure. The option used will affect the amount and percentage of exchange control SVDP levies payable. In this document we discuss two possible options to unwind the loop and calculate the levies:

a) Option 1: Foreign trust distributes the portfolio of assets in the Republic to the SA resident beneficiary as a capital distribution, which unwinds the loop and no funds are to be exported from the Republic:

Calculation of levies for option 1:

Transaction Type	Unauthorised amount	Levy - percentage and actual amount	Reason for levy
1. T1EF	USD 1 000	0%	Duplication as it is included in 2. below
2. T2EF + TGF on T2EF as at 29/2/2016	USD 3 100 (see H1.4.a.)	5% - USD 155	Portfolio to be distributed to SA resident in RSA
3. TF + TGF on TF as at 29/2/2016	USD 500 (see H1.4.b.)	10% - USD 50	Funds retained abroad
<i>Total levy payable from offshore funds</i>		<i>USD 205</i>	

- b) **Option 2:** Foreign trust sells the portfolio in the Republic to a SA resident at historical cost being USD 2000 and repatriates the original cost from the Republic:

Transaction Type	Unauthorised assets	Levy - percentage and actual amount	Reason for levy
1. T1EF	USD 1 000	0%	Duplication as it is included in 2. below
2. T2EF + TGF on T2EF as at 29/2/2016	USD 3 100	10% - USD 310	Trust repatriates sale proceeds/original cost of portfolio
3. TF + TGF on TF as at 29/2/2016	USD 500	10% - USD 50	Return on investment externalised and retained abroad
<i>Total levy payable from offshore funds</i>		<i>USD 360</i>	

I. Conditions to be imposed if an exchange control Special Voluntary Disclosure Programme application is successful

I.1 The following conditions will be imposed by the SVDP Unit, should an applicant's exchange control SVDP application be successful:

I.1.1 Within a period of one hundred and eighty (**180**) days, calculated from the date on which the application was submitted, an applicant must provide suitable documentary evidence to the effect that the 'loop structure' has been unwind to the satisfaction of the SVDP Unit.

I.1.2 As explained in this document, a levy of an amount equal to **5/10 per cent** may be charged on each of the 'Transaction Establishment Funds', 'Transaction Funds' and the 'Transaction Growth Funds', where applicable

I.1.3 An applicant may retain offshore all funds regularised and any additional legal foreign funds acquired subsequent to the regularised transaction. In this regard, the foreign assets retained may not:

- be placed at the disposal of a third party normally resident in South Africa without prior Finsurv approval; and
- be utilised to enter into a transaction or a series of transactions to directly or indirectly acquire shares or other interests in a CMA company or a CMA asset. Similarly, such funds may not be introduced to a CMA country as a loan to a CMA resident.