

# Insights into exchange control relaxation

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The purpose of exchange control is to regulate the outflow of money in order to protect the economy, and to provide a framework for foreign currency. In February 2020 the Finance Minister announced that the system in place would be converted to a risk-based capital management framework, as opposed to an exchange control system.

From 1 March this year, a new capital management flow requirement framework replaced the current exchange controls. Part of this entails an easing of controls for loop structures.

An exchange control loop is where an SA resident holds an interest in an offshore structure or an investment in an offshore product, and where that product then invests back into SA or holds an interest in SA.

## Easing of controls for loop structures

Based on the SA Reserve Bank's (SARB) interpretation of exchange control regulations, published in 1969, Regulation 10(1)(c) states that no-one can export capital without the SARB's consent. As an example, the annual R10m and R1m discretionary allowance are forms of consent.

Prior to the total abolition in January this year, residents could acquire up to 40% of the shares in an offshore company. Previously there was no concession for offshore trusts. The circular of 4 January states that the loop restrictions are completely abolished. This is seen as a way to support SA's growth and is part of a broader revamp of the entire exchange control system.

Under the new framework all cross-border transactions will be allowed except those that are subject to capital flow measures. The intention is to reduce red tape on legitimate flows.

Essentially, the current system is one of "investors may not do anything", whereas the new system is intended to be one of "investors can do anything except that which we say they cannot".

Also important to note is that the abolition only applies to new products and not existing structures.

South African companies can acquire shares in an offshore company that invests back into SA.

However, the company has to acquire a minimum of 10% in the offshore company in which it is taking up equity.

## Reporting

Along with the relaxation of the exchange control loop, National Treasury has introduced certain reporting requirements. The January circular advises that an investment in an offshore structure must be reported to the authorised dealer (the local bank) when the transaction is finalised and after that, the authorised dealer is required to submit annual progress reports to the SARB.

There are still questions around how this will work. Banks have their own reporting systems and it will therefore differ slightly depending on the bank used.

If an individual makes a loan to an offshore trust and that trust makes an investment back into SA, that will need to be reported.

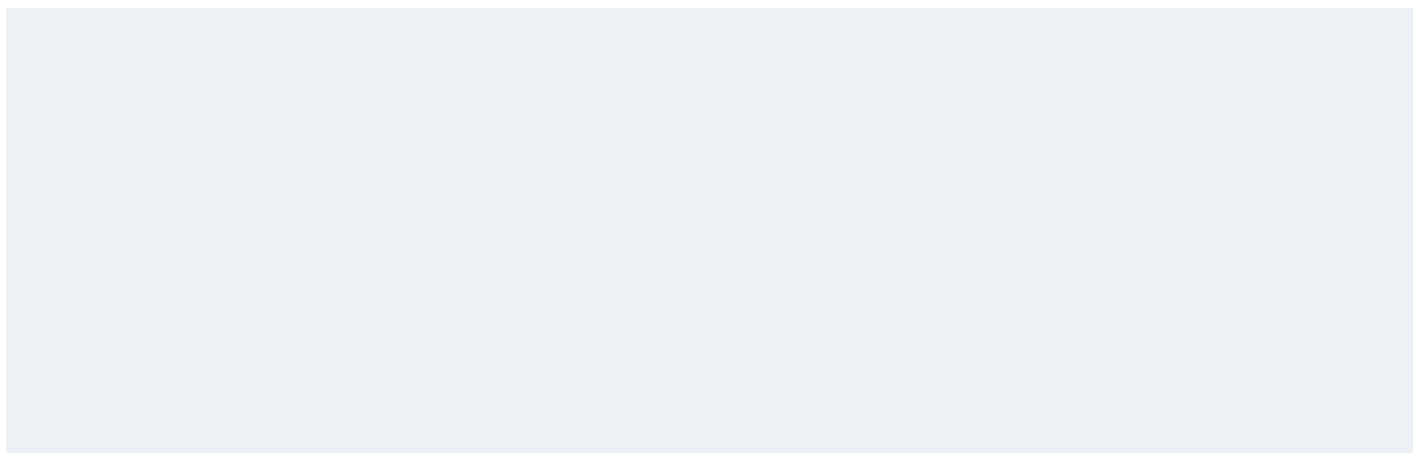
There are also questions around the reporting of beneficiaries. As the SARB and the authorised dealers understand loops – if the trust has offshore beneficiaries, then they have an interest in a loop structure. We await clarification as to whether the bank should be reporting all the beneficiaries to the SARB as having an investment in an offshore structure.

We also await clarification on whether financial services companies will need to report to the authorised dealer on investments made by clients.

Issues such as this will be dealt with at the next rulings meeting, in mid-March, and we expect more guidelines after that.

We don't expect the tax clearance certificate requirement to be done away with. We expect that to remain in place.

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