

Changes in the offshore regulatory and reporting environment

30 May 2022 | Nico Le Roux, founder of Incompass

Nico Le Roux examined some of the recent regulatory changes in the offshore investing environment.

When dealing with international investments, it's helpful to understand the flow of funds through the international banking system. This provides a context for the rules, regulations and reporting requirements and how the recent changes in the regulatory environment are beneficial to investors.

What do we need to know about exchange control?

Exchange control plays a critical role in the flow of funds offshore. Since the 1980s, due to Apartheid, sanctions and South Africa's economic isolation, the flow of capital offshore was limited. Over time, since 1994, these limitations have been lifted and currently individuals may invest R11 million per annum offshore through Single Discretionary Allowance (SDA) and the Foreign Investment Allowance (FIA). Also, the South African Reserve Bank (SARB) has relaxed reporting around this.

"We think that while exchange control relaxation has been gradual, the size of funds allowed to flow offshore will be limitless. The landscape has changed drastically, and we have seen that even the special clearances for sums greater than the R11 million – often as much as R100 million – are seldom denied," says Nico.

Some changes in exchange control as of 22 February 2022

1. In February 2022, in the Budget Speech, one of the changes in exchange regulation is that offshore money and foreign assets now can be transferred between residents. This would apply to authorised assets already offshore, and no SARB approval is required. The effect of this new change in exchange control makes it relatively easy to have joint accounts at investment companies.
2. Inheritance and gifts can remain offshore without any reporting necessary. In the past, these

assets had to come back to South Africa. It's important to know that this applies to transactions that have occurred from 22 February 2022. All transactions before this date are subject to the required reporting.

3. Special clearances are applicable in the case of taking a large sum of money offshore – in excess of R11million, and sums often as high as R100 million or R200 million. The proceeds of these special clearances now can be transferred to a non-resident trust. However, the annual reporting of these offshore flows must be done through the authorised dealer that facilitated the transaction.
4. SARS' responsibility in offshore flows is increasing significantly. With few limitations on funds flowing offshore, the SARB is increasing SARS' involvement in exchange control, particularly in the area of reporting. Also, financial emigration is being linked to an individual's tax residency status. Funds can flow offshore but subject to local tax disclosure and compliance.

As always, with all of these changes, and regarding offshore investing in general, it is prudent to consult a tax professional or to speak to your financial adviser before progressing with any offshore fund transfers.

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Glacier Financial Solutions (Pty) Ltd.

A member of the Sanlam Group
Private Bag X5 | Tyger Valley 7536 | Email client.services@glacier.co.za | Tel +27 21 917 9002 / 0860 452 364 | Fax +27 21 947 9210 |
Web www.glacier.co.za | Reg No 1999/025360/07
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Private Bag X8 | Tyger Valley 7536 | Tel +27 21 950 2600 | Fax +27 21 950 2126 | Web www.smmi.com *Reg No 2002/030939/07
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