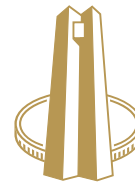


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SOUTH AFRICAN RESERVE BANK
Financial Surveillance Department

14/6/2_2021

2021-02-26

Exchange Control Circular No. 6/2021

Emigration - phasing out the concept of emigration as recognised by the South African Reserve Bank

We refer to Exchange Control Circular No. 5/2021 and the previous announcement made by the Minister of Finance in the 2020 Budget Review, wherein it was stated that the concept of emigration as recognised by the South African Reserve Bank will be phased out with effect from 2021-03-01 and be replaced by a verification process based on the requirements below.

In this regard, all applications by individuals in excess of the single discretionary allowance threshold, require a Tax Compliance Status (TCS) from the South African Revenue Service (SARS). Private individuals who transfer more than R10 million offshore will be subjected to a more stringent verification process. Such transfers will inter alia trigger a risk management test that will include certification of the tax status and the source of funds, as well as verification that the private individual complies with anti-money laundering and countering terror financing requirements, as prescribed in the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

Under the new framework, natural person emigrants and natural person residents will be treated identically. The current process of controlling or blocking an emigrant's remaining assets in a special 'blocked funds account' will fall away and all transfers from these accounts will be handled as normal fund transfers in line with any other foreign capital allowance transfer.

To ensure a smooth transition, the Financial Surveillance Department (FinSurv) of the South African Reserve Bank and SARS have agreed that the current exchange control policy pertaining to emigration will apply to all Forms MP 336(b) that have

been attested, i.e. stamped and signed by an Authorised Dealer on or before 2021-02-28.

SARS has confirmed that applicants who have had their Form MP 336(b) attested by an Authorised Dealer on or before 2021-02-28 will still be able to apply for a TCS in respect of “Emigration”, in the ensuing months after 2021-02-28, in terms of the current procedure dealing with emigration for exchange control purposes. Once the TCS has been finalised, an application incorporating the Form MP 336(b) and supporting documents should be submitted to FinSurv. (Above R10 million).

All new emigration related applications from 2021-03-01 onwards will be processed by SARS based on a new dispensation of confirming that the taxpayer has ceased to be a resident for tax purposes.

SARS will not require a Form MP 336(b) as part of the TCS application process, however, all the assets and liabilities of the taxpayer must still be completed per SARS TCR01 application form. All private individuals that cease to be residents would have to request a TCS in respect of “emigration” from SARS before Authorised Dealers may be permitted to transfer any funds in this regard. This procedure will apply regardless of whether such a private individual would be transferring any funds abroad at the time he/she ceases to be a resident for tax purposes.

Furthermore, from 2021-03-01 onwards, taxpayers will be able to access their applicable retirement benefits if they can prove to the Retirement Fund (the fund) that they have been non-residents for tax purposes for an uninterrupted period of three years, and an applicable Tax Directive was issued to the fund by SARS. The proof provided to the fund may include proof of being a tax resident in another jurisdiction. It will be required that a taxpayer provide an Authorised Dealer with the applicable TCS from SARS as well as documentation from the fund indicating/confirming the final amount paid out to the taxpayer. This documentation is required prior to effecting transfers in this regard. Further information will be provided by SARS.

The following amendments have been made in the Currency and Exchanges Manual for Authorised Dealers (Manual):

Section A.1

The definition for emigrant has been deleted.

Section B.2(J)

The entire section has been deleted and replaced as follows:

Section B.2(J) - Private individuals ceasing to be South African tax residents

- (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) Natural person emigrants and natural person residents are treated identically.
- (iv) Authorised Dealers may, on confirmation that a private individual has cleared his/her tax residency status with SARS, allow the transfer of assets abroad, subject to tax compliance.
- (v) For transfers up to R1 million per individual per calendar year, Authorised Dealers may transfer funds offshore without the requirement to obtain a TCS PIN letter.
- (vi) In addition to the transfers mentioned in (v) above, Authorised Dealers may allow the transfer of up to a total amount of R10 million per calendar year per private individual who ceases to be a taxpayer and is 18 years and older, provided that a TCS PIN letter is obtained.
- (vii) South African non-tax residents who transfer more than R10 million offshore are subject, initially to a more stringent verification process by SARS; as well as a subsequent approval process from the Financial Surveillance Department. Such transfers will inter alia trigger a risk management test that will include reporting requirements, certification of tax status and the source of funds as well as verification that the private individual complies with anti-money

laundering and counter terrorism financing requirements as prescribed in the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

- (viii) With regard to (vii) above, it is imperative that the application to the Financial Surveillance Department is accompanied by, inter alia, a TCS PIN letter that will contain the tax number and TCS PIN to verify the taxpayer's tax compliance.
- (ix) All transfer of assets by private individuals that have ceased to be South African tax residents, will be transferable subject to tax compliance.
- (x) The tax residential status will determine how Financial Surveillance Department treats the residents' domestic assets taking into account that sale proceeds and assets of non-residents are freely transferable offshore. In this regard, the externalisation of listed domestic securities will be treated similar to cash and will form part of the foreign capital allowance.
- (xi) In respect of the withdrawal of retirement funds when South African residents cease to be South African tax residents, payment of lump sum benefits to individuals who are no longer South African tax residents per SARS' definition, shall only be allowed by Authorised Dealers if the individual member has remained non-tax resident for at least three consecutive years. The requirements stated in (iv) and (vii) above will apply.
- (xii) All assets that were previously blocked as per a specific directive that was given by 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 tax compliance. 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 tax compliance. Any transfers above R10 million, the requirements of (vii) above will apply.
- (xiii) For statistical purposes, private individuals who cease to be South African tax-residents as defined by SARS must, via an Authorised Dealer, furnish the Financial Surveillance Department with a duly completed applicable SARS TCR01 form. This information submitted by private individuals to the Authorised Dealer must be consolidated by the head office, under the name and branch code number of each individual branch for onward submission to the Financial Surveillance Department on a monthly basis. The following information should be included in the return: names, identity numbers, date on which the applicant

ceased to be a South African tax resident, value and nature of the remaining assets.

Section B.3(A)(i)

The reference to “emigrants” has been deleted.

Section B.3(B)

The entire section has been deleted.

Section B.3(C)

The section will now be renumbered to section B.2(B).

Section B.4(B)(iv)(a)(d)(aa)

The entire subsection has been deleted.

Section B.5(B)(ii)(b)(cc)

The entire subsection has been deleted.

Section B.10(I)(i)(b)

The entire subsection has been deleted.

Section B.10(I)(i)(c)

The reference to “emigrants” has been deleted.

Section B.10(J)(ii)(a)(aa)

The entire subsection has been deleted.

Section B.10(J)(ii)(d)(aa)

The reference to “emigrants” has been deleted.

Section B.10(J)(ii)(d)(bb)

The entire subsection has been deleted.

Section B.10(J)(iii)(a)

The reference to “emigrants” has been deleted.

Section B.14(E)(i)

The reference to “emigrants” has been deleted.

Section G.

Any reference to “emigrants” and/or any specific sub-sections dealing specifically with emigrants has been retained temporarily until discussions with the relevant stakeholders have been finalised.

Section J.

Due to changes that need to be made to the FinSurv reporting system, the reference to “emigrants” has been retained temporarily.

Section K.(A)

The entire section has been deleted and replaced with:

For statistical purposes, private individuals who cease to be South African tax-residents as defined by SARS must, via an Authorised Dealer, furnish the

Financial Surveillance Department with a duly completed applicable SARS TCR01 form.

The following amendments have been made in the Currency and Exchanges Manual for Authorised Dealers with limited authority (ADLA Manual):

Section A.1

The definition for emigrant has been deleted.

Section B.1(A)(ii)(e)

The sub-section has been deleted.

The amended Manual and the ADLA Manual as well as guideline documents for both individuals and business entities may be accessed on the South African Reserve Bank website: www.resbank.co.za by following the links: Home>What we do>Financial Surveillance>Financial Surveillance Documents.

Head of Department: Financial Surveillance