

Loop structures and inward investment into South Africa



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by Hugo van Zyl

Loop – what is a loop

- “a loop structure will be created when
- a South African-resident individual, trust or corporate entity
- transfers authorised or unauthorised funds from South Africa (or uses existing offshore funds or a combination thereof) to set up, for example, a foreign trust or entity.
- The foreign trust or entity involved would directly or indirectly (via another offshore entity) reinvest its authorised or unauthorised funds in South Africa, thereby creating a loop structure.

The perceived Mischief

- The reinvestment could be in the form of South African shares, assets or loan accounts being acquired or created.”
- Such a loop structure would mean that the investment of funds from the offshore structure into South Africa; and
- The payment of dividends, profits or interest offshore
- [Which] would result in the accumulation of value over and above the nominal foreign investment that was initially made.
- 2021 – following Feb 2020 budget
 - Tax schemes to reduce the DWT and to avail to CGT exemption on CFC and CFC held shares

Circular 1 of 2021 – January 2021

Effective 1 January 2021

- "it is advised that the full 'loop structure' restriction has been lifted
- to encourage inward investments into South Africa;
 - subject to the normal criteria applying to inward investments into South Africa and
 - the reporting to the Financial Surveillance Department"
- Note: NT Treasury amended the ITA Act
 - The amendments will come into operation on 1 January 2021 and apply in respect of dividends received or accrued to any controlled foreign company and in respect of the disposal of shares in controlled foreign companies on or after that date.

Gifts

Any foreign asset received by a resident from a non-resident

- as a gift or donation
- is not exempted from the provisions of Regulations 6 and 7; and
- Must be declared and repatriated to South Africa.
- Alternatively, a fully motivated application to retain the assets abroad must be submitted to the Financial Surveillance Department.

Inheritance from Res Estate

- Residents, who became entitled to a foreign inheritance from the estate of a resident, are required to declare such foreign assets inherited via an Authorised Dealer to the Financial Surveillance Department
 - for exemption from the provisions of Regulation 6 and/or 7.
- The foreign assets inherited may, on application, to the Financial Surveillance Department
 - **normally be retained abroad** provided that the assets were held abroad by the deceased in compliance with the provisions of the Regulations.

Inheritance – “HOWEVER”

- The approval of the Financial Surveillance Department to retain such foreign assets abroad will be granted subject to the condition that the foreign assets may not be placed at the disposal of other residents.
- Where it is disclosed to the Financial Surveillance Department that the foreign assets inherited were held by the deceased in a manner contrary to the provisions of the Regulations,
 - an application for regularisation of such assets must be submitted via an Authorised Dealer to the Financial Surveillance Department.
- **If approved**, the retention of such assets abroad is subject to the conditions that the assets will not be placed at the disposal of other residents.

Inheritance – Bona Fide NonRes Estates

Residents, who inherited foreign assets from a non-resident after **1998-03-17** are exempted from the provisions of Regulations 6 and 7.

- Residents **need not declare** to their Authorised Dealer inheritances or legacies from bona fide foreign estates that accrued after 1998-03-17 and may retain the capital and any income generated thereon abroad.

“HOWEVER,”

- **The retention of such assets abroad is subject to the condition that the assets will not be placed at the disposal of other residents.**

Why always however – Loop is legal?

- Circ 1 of 21 speaks to investing
 - Resident individuals, corporates and private equity funds (**no permission to SA trusts**) 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**
 - the submission of an annual progress report to the Financial Surveillance Department via an Authorised Dealer.
 - **all inward loans from South African affiliated foreign investors must comply with the directives issued in section 1.3(B) of the Authorised Dealer Manual.**
- Loans by SA residents of foreign assets or foreign currency to another resident
 - Is not an investment

Important Rules

- No permission for SA trust
 - To invest into foreign assets
 - To avail to FCA
 - Yet the inheritance rule speaks to residents, not private individuals
- SA Trust may not enter into a direct loop
 - Yet a corporate below a trust may hold regulated foreign assets
 - Said corporate may then enter into a loop
- Loop no longer on approval
 - But all loops to be placed on record
 - Irregular loops not automatically regulated or permissible loops

Thank you

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