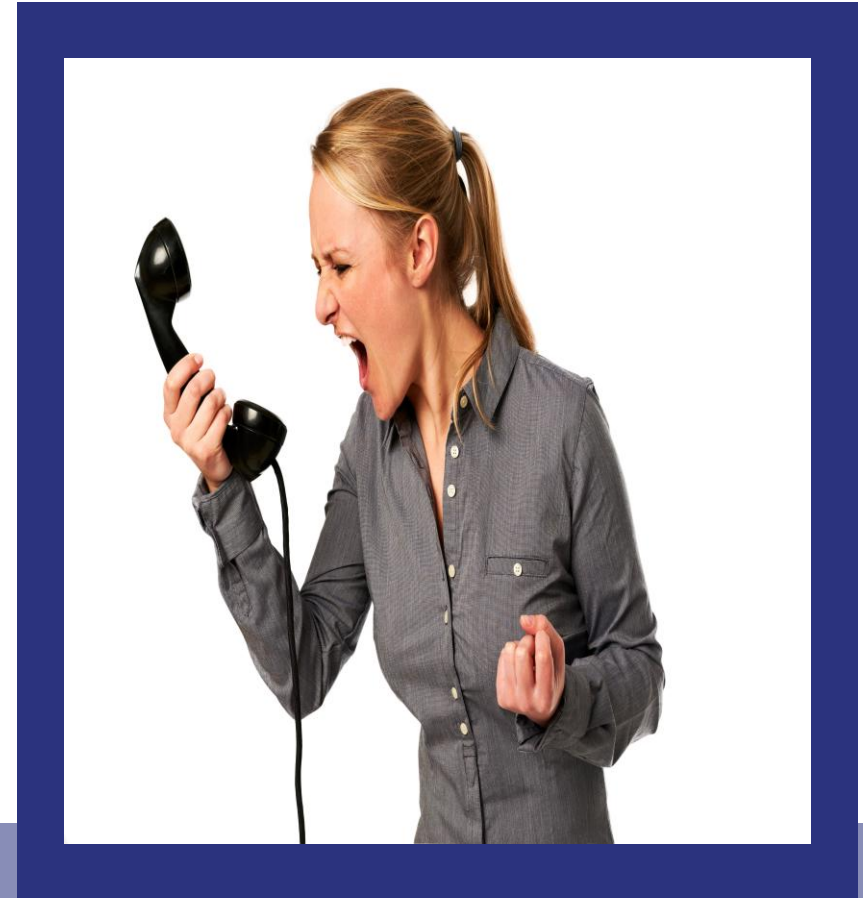


**UNDERSTANDING EXCHANGE CONTROL IN  
THE CONTEXT OF:**

**DECEASED ESTATES & TRUST'S**



# EXCHANGE CONTROL

Exchange Control is a system of regulations enforced by the South African Reserve Bank (SARB) that limits the movement of funds in and out of the country, controlling how much foreign currency SA residents can buy, sell, or transfer abroad, aiming to protect the country's currency reserves and economic stability by managing capital flows.

## Compliance requirements:

- Reporting cross-border transactions to the SARB via BOP Codes
- Obtaining necessary approvals for large transfers or transfers not specified in the regulations
- Maintaining documentation to support foreign exchange transactions
- Identifying resident and non-resident status for exchange control purposes in relation to tax status.

# EXCHANGE CONTROL CONT.

## Important to Note:

- Excon regulations in some instances can be very specific and in others merely guidelines open to interpretation based on facts and/or circumstances.
- Viewed on a Case-by-Case basis & a Risk Based Approach is applied – not a one size fits all!
- Regulations must be viewed from a SARB and SARS point of view, bear in mind the two institutions regulations are not always aligned, this will be evident by the end of this presentation.

# INTRODUCTION

There is a very common misconception amongst South African's living abroad, who assume they are Non-Residents because they have packed up and left SA and are now citizens of another country.

New regulations which came into effect on 1 March 2021, an individual living abroad is still considered an SA resident, if they have not completed the below:

- Formally emigrated through the SARB prior to 01/03/2021 or,
- Ceased to be tax resident through SARS, post 01/03/2021 (*I refer to this as financial emigration or tax migration*)

# TYPES OF OVERSEAS BENEFICIARIES

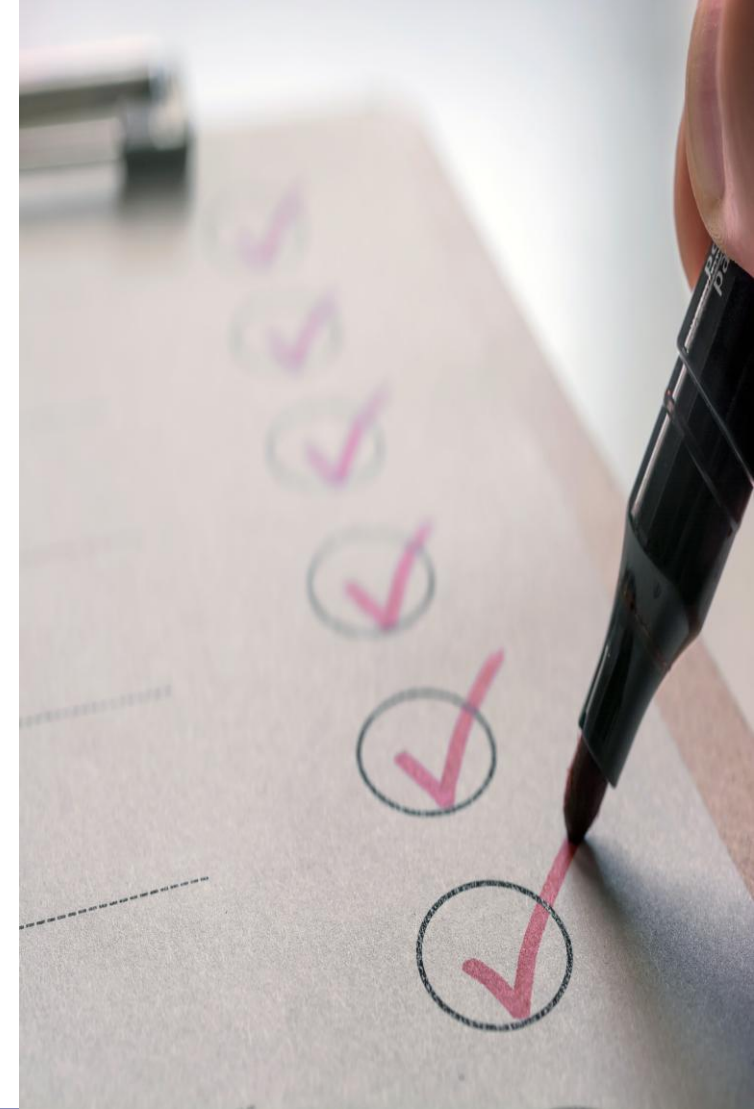
1. Complete Non-Resident Beneficiary.
2. Emigrant Beneficiary - South African who Formally (SARB) or Financially (SARS) emigrated.
3. South African Resident Living Abroad.



# IDENTIFYING OVERSEAS BENEFICIARIES

\* Request passport – Look for place of birth, if SA, then proceed to the below:

1. When did you leave SA and how old were you?
2. Were you ever a taxpayer in South Africa?
3. Have you formally emigrated from South Africa? (through the South African Reserve Bank)
4. If so, you will be required to provide proof ?
5. If you did not formally emigrate from SA:
  - ✓ Do you still have your Green Barcoded ?
  - ✓ Are you now a Citizen and Taxpayer in your new Country?



# SOUTH AFRICAN RESIDENT LIVING ABROAD




## FICA Requirements

Exchange Control regulations for SA residents living in SA or abroad when remitting funds out of SA:

- Beneficiaries must have a valid South African Green Barcoded ID book
- Registered for Tax in SA or Offshore
- Can only remit up to R 1 million per calendar year

A beneficiary who wishes to remit more than R 1 million must have a tax number and be registered with SARS, an AIT clearance must be made to SARS to approval.

## Typical Issues that Arise

- Left SA as a minor/ never registered for tax
- Left SA Pre 1994
- Left SA many years ago
- Thrown ID Book away/Lost it 
- Packed up and left recently, no documentation

# SOLUTIONS

## Solution 1: Exchange Control Application

Circular 8 of 2021, and in terms of Section B.2(J)(xiii) of the Currency and Exchanges Manual for Authorized Dealers dated 21 May 2021, which reads as follows:

Applications by private individuals who cease to be residents for tax purposes and who are no longer active on the SARS registered database and receive **an inheritance or life insurance policy** (excluding lump sum benefits from pension preservation, provident preservation, retirement annuity funds and annuities from insurers) up to R10 million, will not be required to apply to SARS for a Manual Letter of Compliance – Transfer of funds.

Applicable to:

- Those that have formally/financially emigrated with proof, left SA as a minor, never registered for tax, left more than “5 years ago” or pre-1994 (Old ID Book – Blue one)
- Documents required:
  - Beneficiaries - Copy of Foreign Passport, Certificate of Naturalization & Proof of Tax in new country
  - Administrator – LOE, Final L&D, Will, Deceased ID & Death Certificate
  - Amounts more than R 10 million – SARS manual letter of compliance

*\* Note: The bank evaluates the application on a risk-based approach, no guarantee this will be successful unless the beneficiary has formally/financially emigrated.*

# SOLUTIONS CONT.

## Solution 2: R 1 million Single Discretionary Allowance (SDA) or Tax Emigration

Applicable to:

- ✓ Those that have recently left SA, who are still on the SARS database and have not formally/financially emigrated.
- ✓ Any amount more than R 1 million & up to R 10 million, requires a SARS Application for International Transfer (AIT) approval.
- ✓ Amounts more than R 11 million, require the AIT from SARS and Approval from SARB.

### FICA Act:

Exchange Control regulations for SA residents living in SA or abroad when remitting funds out of SA:

- Valid South African Green Barcoded ID book
- Can only remit up to R 1 million per calendar year



# OTHER TYPES OF FOREIGN PAYMENTS

From Deceased Estates and Life policies:

- **Over Paid Pensions** – *Executor must provide bank statements of the deceased showing funds were received.*
- **Probates** – *Invoice required from Foreign Solicitor.*
- **Payments to Offshore Estates where a foreigner had SA assets** – *Estate must be registered in SA and SARB approval required.*
- **Advance Inheritance Payments** – *Only applicable to SA residents living abroad, excludes Non Residents and those that fall under Section B.2(J)(xiii)*
- **Life Policy payments to the beneficiary** – *Documentary proof the beneficiary is nominated and the amount due. The beneficiary resident or non resident must open a bank account in their name. Policy will not pay to a 3<sup>rd</sup> party.*

# FOREIGN ASSETS

Foreign assets from a South African Estate DO NOT need to be remitted back to SA. (As long as no recourse to SA)

- \* Regulation (i) refers to cash
- \* Regulation (ii) physical assets

**(D) Foreign inheritance and legacies from South African estates with foreign assets**

- (i) Private individuals, who on or after 2022-02-23 became entitled to a foreign inheritance from the estate of a private individual, are exempted from the provisions of Regulations 6 and 7, subject to local tax disclosure and compliance.
- (ii) However, in respect of assets that accrued to private individuals prior to 2022-02-23 or where 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.



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# REMAINING ASSETS

A word of caution from my experience with regards to beneficiaries putting assets into their name – this falls outside of **Section B.2(J)(xiii)** of the Excon Manual.

*Example: Dricus Du Plessis left SA in 1980*



# TESTAMENTARY TRUSTS

\* All the aforementioned regarding how we treat individual beneficiaries from Deceased Estates still applies here.

Frequent scenarios one may encounter:

- Income/Capital distributions to nominated minors living abroad – Tuition, Living Expenses, Clothing etc
- Income/Capital distributions to nominated adult beneficiary living abroad – Provide Will, Trustee's Resolution
- Distributions as a result of the renunciation of a beneficiary's right to capital – SARB approval
- Can a Testamentary Trust hold offshore assets ? YES – SARB approval is required and viewed on a case by case basis. *E.g. Property*

# INTER VIVOS TRUSTS

*\* Open to debate and still not quite conclusive.*

## Exchange Control Circular 3 of 2023:

This circular proposes amendments to section B.2(J)(xii)(a) of the AD Manual, which deals with private individuals who cease to be residents for tax purposes, specifically individuals with blocked assets per a FinSurv directive given in terms of Exchange Control Regulation 4(2) pertaining to income and capital distributions abroad from South African inter vivos trusts. Whereas the section previously stated that such distributions may be transferred abroad, subject to the tax compliance status (TCS) process being completed by the trustees of the trust, the section now states that the transfer abroad is subject to the TCS process being completed by the private individual and/or beneficiaries of the trust.

# INTER VIVOS TRUSTS CONT.

## Concerns and Issues relating to the regulation:

- Does not account for complete Non-Residents – *However a SARB application is required.*
- Banks Interpretations of the regulation differ.
- If you have ceased to be tax resident, why would you be required to keep your eFiling profile active
- How do we treat Minor's and those who left SA a long time ago that don't have profiles or required documents
- Required documents as it stands:
  - Trustee Resolution confirming payment and amount
  - SARS TCS Good Standing letter for beneficiary
  - SARS ceased to be tax resident letter for beneficiary
  - Passports
- \* Amounts more than R 10 000 000 require SARB approval

# INTER VIVOS TRUSTS CONT.

South African Trust can make a capital distribution to an Offshore Trust

SARS published notice on the 1 August 2023 stating that:

*"It has been the practice of SARS not to approve the release of funds when resident Trusts make distributions to non-resident Trusts. Following queries in this regard, SARS herewith clarifies its stance on the matter and confirms that it will consider approval for the release of funds/amounts distributed to non-resident Trusts..."*

# INTER VIVOS TRUSTS CONT.

## South African Trust can make a capital distribution to an Offshore Trust

Requirements:

- ✓ The offshore trust must be a named beneficiary of the local trust.
  - ✓ The distribution must be made in accordance with the terms and conditions of the trust deed of the local trust.
  - ✓ The local trust must be a resident trust.
  - ✓ The local trust must be tax compliant and must be able to show that all tax liabilities in respect of the distribution were or will be settled.
- *The SARS notice fails to clarify whether they are agreeable to Cash and/or Asset distribution*
  - *There are no specified limit on amounts yet*

# INTER VIVOS TRUSTS CONT.

The trustees of the local trust are required obtain a manual letter of compliance from SARS. The following documentation must accompany the application:

- ✓ A copy of Trust deed of the local trust.
- ✓ A copy of the latest Letter of Authority issued by the Master of the High Court.
- ✓ Resolution by the trustees of the local trust, authorising the distribution to the offshore trust.
- ✓ Details of the source(s) of funds to be distributed by the local trust.
- ✓ Bank statements of the local trust, showing the trust can fund the distribution or the most recent share portfolio statement of the local trust.
- ✓ Latest annual financial statements of the local trust.

# INTER VIVOS TRUSTS CONT.

Once SARS has provided a manual letter of compliance, we need to then approach SARB.

The SARB application will require a letter with confirmation of:

- ✓ Beneficiaries' full names and domicile.
- ✓ Tax residency.
- ✓ Beneficiaries of both trusts are the same South African Individuals and that the foreign trust is also a beneficiary of the SA trust
- ✓ SARS Manual Letter of Compliance

# INTER VIVOS TRUSTS CONT.

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- ✓ Beneficiaries' full names and domicile.
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- ✓ Beneficiaries of both trusts are the same South African Individuals and that the foreign trust is also a beneficiary of the SA trust
- ✓ SARS Manual Letter of Compliance

# CONCLUSION

- Understand the beneficiary's background, collect as much information as possible and ask the right questions.
- Exchange control regulations in most cases are merely a guideline and open to interpretation, if one is unsure, make a SARB application.
- Use an Intermediary
  - Open bank accounts quick and efficiently
  - Better service and often more knowledgeable than the banks
  - Saves the administrator time that's not often billed for
  - Cheaper for the beneficiary when converting to foreign currencies
  - SARS Emigration and Tax Clearances
  - SARB Approval applications

# THANK YOU

Please feel free to contact me if you need any further advise or information.

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