

2003-12-11

EXCHANGE CONTROL CIRCULAR NO. D. 417

EXCHANGE CONTROL AMNESTY AND AMENDMENT OF TAXATION LAWS ACT, 2003 (ACT NO. 12 OF 2003) – ("THE ACT")

Further to Exchange Control Circular No. D.405 issued on 2003-09-30, Authorised Dealers are advised of the following further administrative concessions and consequential amendments to certain aspects of Exchange Control Circular No. D.405.

These amendments will simultaneously be published on the websites of the South African Reserve Bank and the Amnesty Unit. Authorised Dealers are accordingly requested to refer their customers thereto.

With regard to the section therein relating to the Re-Investment of Foreign Assets or the Proceeds thereof into the Republic, the following amendments have been effected:

1. The expression "alternatively to 5.2.2.1" has been inserted after the expression "subject to the provisions of 6 below," at the end of paragraph 5.2.2.1;
2. a new paragraph 5.2.2.1A which reads as follows, has been inserted subsequent to paragraph 5.2.2.1:

"5.2.2.1A the identity and value of the Transaction Funds have been disclosed to the Exchange Control Department of the South African Reserve Bank via an Authorised Dealer and an amount equal to 10% (ten per centum) of the value of the Transaction Funds has been repatriated to the Republic and shall have been paid to the Exchange Control Department of the South African Reserve Bank via an Authorised Dealer to be held by the Exchange Control Department of the South African Reserve Bank subject to the provisions of 6 below,";

3. the expression "or 5.2.2.1A" has been inserted after the reference to 5.2.2.1 in the second line of paragraph 6; and
4. paragraph 6.1.1.2 has been deleted and substituted with the following:

"6.1.1.2 the repatriation or partial repatriation of the Transaction Funds and the Transaction Growth Funds in order to comply with the terms of 5.2.2.1 or 5.2.2.1A and 5.2.2.2 or 5.2.2.3; and".

The foregoing is intended to allow South African residents who wish to avail themselves of the dispensation in terms of Exchange Control Circular No. D.405, the opportunity to elect to retain the Transaction Funds abroad against payment of an amount equal to 10% (ten per centum) of the value of such Transaction Funds and

should be viewed as a further measure in order to ensure that the objectives of the amnesty are achieved.

It has come to the attention of the Control that uncertainty exists about the applicability of the provisions of Exchange Control Circular No. D.405 regarding the re-investment by South African residents, whether directly or indirectly, of foreign assets or the proceeds thereof into the Republic as loans ("Loans") to South African residents. These transactions may be dealt with on the following basis:

- (a) The Loans must be redeemed by the borrower by no later than the Dispensation Expiry Date;
- (b) to the extent that the Loans constitute funds which have been transferred from the Republic or accumulated abroad (Transaction Establishment Funds) in contravention of the Exchange Control Regulations, such funds should be dealt with in terms of the Act;
- (c) to the extent that the Loans were derived from funds which would, in terms of Exchange Control Circular No. D.405, either constitute Transaction Funds or Transaction Growth Funds, such funds must be dealt with in the manner provided for in the Circular; and
- (d) the interest paid abroad by the South African resident (i.e. the borrower) in respect of the Loans would be regarded as Transaction Funds and must be dealt with in the manner provided for in Exchange Control Circular No. D.405.

It has furthermore come to the attention of the Control that there may be instances where applicants who have, prior to 2003-02-28, received Transaction Funds abroad as a result of their involvement in a 74/26 Structure and who may have accounted for those funds in terms of their amnesty application. In these instances, and in respect of such amounts, no amount need be paid to the Exchange Control Department of the South African Reserve Bank in terms of paragraph 6 of Exchange Control Circular No. D.405, provided that -

- (a) such funds qualify for amnesty in terms of the Act; and
- (b) satisfactory evidence to that effect is submitted with the applicant's application regarding the disposal of the applicant's shares or other interest in the South African resident company.

This dispensation similarly applies to Transaction Growth Funds.

DEPUTY GENERAL MANAGER
D.417