

# Newsbrief

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## South African Resident Individuals and Companies – Loop Structures

The South African Reserve Bank – Financial Surveillance Department has on 4th January 2021 issued Exchange Control Circular No. 1 which spell good news, especially for South Africans with investments in foreign entities intending to own South African assets. The subject of the circular “*South African resident individuals and companies - loop structures*” takes effect as from 1<sup>st</sup> January 2021 and the reform applies to private individuals and companies, including private equity funds that are tax resident in South Africa.

Generally, loop structures in its typical form arises where a resident of Country A (individual or company) holds an investment in a foreign company that directly or indirectly owns shares or assets back in Country A. Following the South African Minister of Finance announcement in the 2020 Medium Term Budget Policy Statement, the objectives of the removal of the prohibition on the loop structures in South Africa, is to support South Africa’s economic growth by encouraging inward investments and to promote South Africa as a financial hub for the African continent.

Loop structures were previously prohibited on the basis that they created a channel for the direct or indirect export of capital from South Africa. This prohibition had been in place for decades and had been the subject of much debate as well as various court cases, with some partial relaxations occurring in recent years.

The changes brought by the Exchange Control Circular No. 1/2021 can be summarise as follows:

Resident individuals (*section B.2(B)(i)*), companies (*section B.2(C)(i)(f)*, *section B.2(C)(ii)(e)*) and private equity funds (*section B.2(G)*) may utilise authorised foreign assets to invest in South African assets through a loop structure, subject to the following:

- The investment must be reported to an Authorised Dealer, i.e. local bank, as and when the transaction(s) is finalised;
- An annual progress report must be submitted to the Financial Surveillance Department of the South African Reserve Bank (SARB-FSD) through an Authorised Dealer;

- An Authorised Dealer must view an independent auditor's written confirmation or suitable documentary evidence verifying that such transaction(s) is concluded on an arm's length basis, for a fair and market-related price;
- Upon completion of the transaction, the Authorised Dealer must submit a report to the SARB-FSD which should, among others, include the name(s) of the South African affiliated foreign investor(s), a description of the assets to be acquired, the name of the South African target investment company (if applicable), the date of the acquisition and the foreign currency amount introduced;
- All inward loans from South African affiliated foreign investors must still comply with the current exchange control rules applying to inward foreign loans; and
- Existing unauthorised loop structures (i.e. created prior to 1 January 2021), must still be regularised with the SARB-FSD.

## Foreign Inheritance

### Section B.17(D)

- (ii) 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.
- (iii) 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.

The removal of the prohibition on loop structures is a significant exchange control relaxation that will impact many structures for both individuals and companies. South African investors should, therefore, carefully consider the impact of the proposed relaxations on their current and/or future investments, as well as existing unauthorised loop structures.

*The above have been communicated for information purposes only and not intended in anyway to be any kind of advice. Proper legal advice must be sought as appropriate.*

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- management and family office support structures
- focus on a complete set of fund structuring and administration services
- corporate structuring and advice
- company formation and corporate management
- administration and accounting
- establishment of trusts and provision of trustee services
- back office administration and accounting services
- outsourcing and payroll services
- business administration services, including international trading, licensing and financing
- expatriates occupation and residence permits
- group investment holding and management services

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