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EXCHANGE CONTROL SHOCK

SA TREASURY IN "SILENT BUT VIOLENT" MOVE

By Magnus Heystek - Investment Strategist, Brenthurst Wealth

IN THIS ISSUE

"Some tax practitioners say it is the end of the financial freedom South African taxpayers have gradually experienced since 1997, when the first steps were taken to loosen the exchange control screws."

SARS TIGHTENS FOREX RULES

In a sudden and almost totally unexpected move last week, just before the long weekend and without any consultation whatsoever, Treasury introduced a new regime for South Africans who are either emigrating financially or simply want to make use of the R10m annual investment allowance.

In one foul swoop described by some tax consultants as "silent but violent", Treasury now deems financial emigration and the application for the annual R10m allowance to be one and the same thing, now calling it an Approved International Transfer (AIT) which requires the same complicated and intrusive process before permission is granted.

Some of these requirements are now so extreme and impractical that many taxpayers will simply walk away and instead use alternative methods (legal and/or illegal) to build up some offshore capital.

For instance, SARS now requires proof of the taxpayer's WORLDWIDE assets, at COST, which is a new and possibly an extremely difficult requirement to fulfil. Most investors who have some form of offshore portfolio – either shares, endowments or properties – would have built this up over decades, not years, and the likelihood of them still having all the required documentation plus sources of capital at hand, is slim.

Some tax practitioners say it is the end of the financial freedom South African taxpayers have gradually experienced since 1997, when the first steps were taken to loosen the exchange control screws. The Apartheid Government introduced restrictions on citizens' ability to move their money in order to stop capital flight after Sharpeville in 1961.

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These new regulations have been introduced to stem the massive outflow of capital from South Africa, particularly since the maximum allowance was increased to R10m per person per year.

It has been clear for some time now that the flow of money out of SA has been far more significant than was expected, especially since 2015, when wealthy families could take out R11m per year for each registered taxpayer. Since then, it has not been uncommon for well-heeled families to take out the maximum on a yearly basis.

Even SA's large asset managers started to feel the pain, as most have experienced heavy and steady outflows since then, according to the public accounts of some (Coronation) and the deductive analysis of other prominent institutional players.

During my keynote at the most recent BizNews investment conference in the Drakensberg (BNC#5 in early March), I warned — as I have been doing for several years now — that a change in the ANC government's approach to the free flow of capital can change overnight, which has just transpired. You can watch the keynote via the following link: Treasury's actions have now confirmed Magnus Heystek's warning at BNC#5

Thomas Lobban, head of Cross Border Tax at Tax Consulting SA, was first out of the blocks with comments on these new changes. As it so happened, Tax Consulting SA had a webinar scheduled for last week Wednesday, literally hours after the new rules were published. The webinar attendees were clearly greatly concerned about these new rules, which had already come into effect.

Lobban writes: "**It may come as a surprise to many that tax and exchange control go hand in hand in terms of South African law. A person who is a "resident" for tax purposes is entitled to transfer up to R1 million abroad before they need pre-approval to take any further amounts offshore during a calendar year. A "non-resident", however, needs pre-approval for every cent that is transferred abroad during a calendar year."**

This generally means that, regardless of whether a person is a "resident" or a "non-resident", they may, at some point, need to obtain a Tax Compliance Status (or "TCS") Pin from SARS. This is issued when SARS approves the transfer of relevant funds offshore.

Prior, SARS made provision for an "Emigration" TCS Pin and for a "Foreign Investment Allowance" ("FIA") TCS Pin. The former would apply to a person transferring funds out of South Africa following their South African tax residency cessation. The latter would apply in all other cases involving funds transferred out of SA.

These are now, effectively, the same, dubbed an "Approval for International Transfer" or "AIT".

For many investors that don't want to be burden with the paperwork and red-tape the new Approval for International Transfer PIN entails, it means ONLY using their annual R1m allowance. For those with children studying abroad, such as myself, it means that this amount, in US dollar terms, continues to become less. In 2019, R1m converted to approximately $90 000. Today it would only give you $54 500, not nearly enough to cover all your expenses.

Furthermore, Lobben states that the new system was created to ease the approval process, however, the extent of paperwork that is required as verification is overpowering. The AIT Pin is now the go-to requirement to approve the movement of funds out of South Africa, i.e., for any additional amount above R1 million per year for a tax resident and for every cent in the case of a person who has ceased to be a tax resident.

The first vital disclosure in the SARS form is whether the taxpayer is considered a "resident" or a "non-resident", for South African tax purposes. Where "non-resident" is selected, SARS will require that a Notice of Non-Resident Tax Status (i.e., a "non-resident confirmation letter") be supplied.

Beyond this, before getting to the finer details that SARS requests, three more questions are asked of the tax-payer, i.e., regarding trust beneficiary status, shareholding in companies, and any loans to trusts. If you stumble at this first hurdle, then hang on to tight.

ASSETS AND LIABILITIES

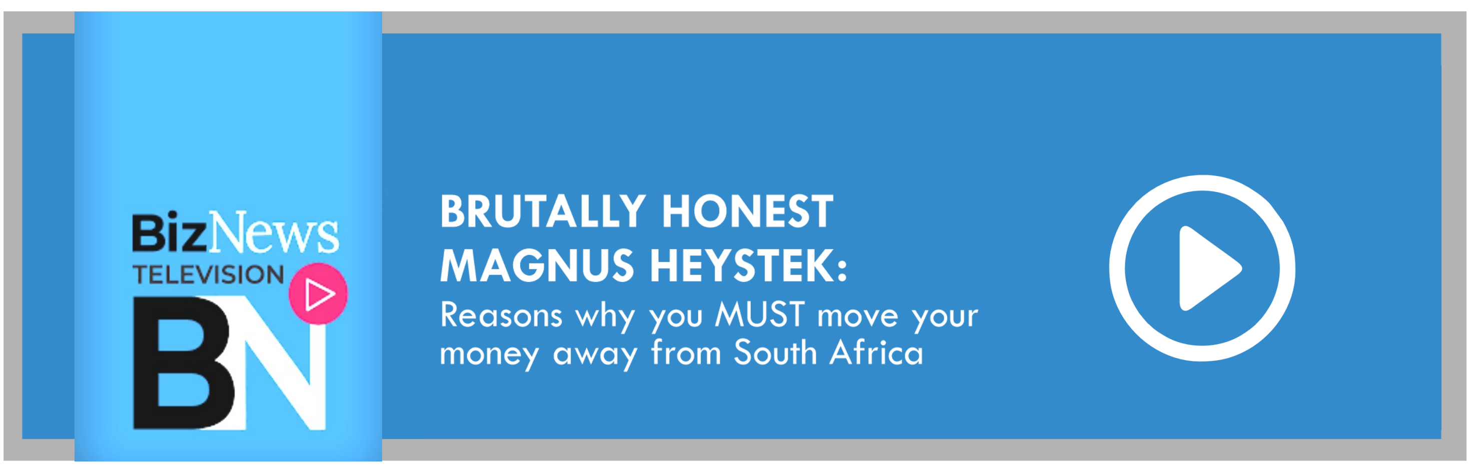
Previously, taxpayers who applied for either an Emigration or FIA Pin from SARS had to disclose their local assets and liabilities from the previous three years. Now taxpayers are required to disclose both their local, as well as their foreign assets and liabilities to SARS.

Within the local assets and liabilities section there are no fewer than 19 mandatory fields regarding different asset categories, spanning from fixed properties to crypto assets, right through to livestock. This is closely mirrored in the Foreign Assets & Liabilities section of the form.

It is also worth noting that every asset listed in the Local and Foreign Assets & Liabilities form must be allocated a value at cost. In each case, this is subject to further verification by SARS. Therefore, capturing the relevant information incorrectly may lead to a delay, if not additional complications, either during the application for the AIT Pin or further down the line with SARS.

Another new requirement is a request for the taxpayer to confirm the sources of these funds. SARS provides nine different "source" types for selection and a further option for "other" sources.
As an example, in the event that you choose "sale of shares", you have to note the date it was acquired, the registration name and trading name of the company, the registration number as well as the capital gains (loss) implication. That is just on information basis. Physical proof of all this information has to be uploaded and submitted along with the application.

TREASURY'S ACTIONS HAVE CONFIRMED MAGNUS HEYSTEK'S WARNING AT BNC#5



ENHANCED OVERSIGHT AND ENFORCEMENT

Since the 2020 Budget Speech, National Treasury has been promising to strengthen the tax treatment in respect of taxpayers with foreign interests, alluding to a "more stringent verification process" and the triggering of a "risk management test" which includes the "certification of tax status and the source of funds".

Perhaps now, spurred on by the recent and abrupt greylisting of South Africa by the Financial Action Task Force in February this year, this silent, but violent change to the TCS Pin request's requirements has, nevertheless, come as a bolt out of the blue. Even South African authorised dealers (i.e., banks) seem to have been caught unawares by this sudden change.

However, the introduction of robust new disclosure requirements by SARS is not entirely out of left field. Last year, in an event held by the South African Institute of Taxation, in collaboration with Standard Bank and Tax Consulting SA, Natasha Singh from SARS's High Wealth Individuals Unit affirmed that SARS would seek to "enhance voluntary compliance" and at the same time detect taxpayers "who do not comply" and "make non-compliance hard and costly" for them.

These comments, read in conjunction with SARS's Strategic Plan for the 2021 to 2025 tax years, indicate that this forms part of its larger project to "develop and implement an enhanced methodology to detect and select non-compliance".

THIS PARADIGM SHIFT IN THE TCS REQUIREMENTS FURTHER AFFIRMS THAT SARS FOCUSES ON THE WEALTH OF TAXPAYERS, BOTH LOCALLY AND ABROAD, AND THE BASIC STANDARD OF LIVING FOR THOSE SEEKING TO EMIGRATE OR TRANSFER THEIR WEALTH OFFSHORE FINANCIALLY. EITHER WAY, THIS MAY NOW BE A MAINSTAY OF THE COMPLIANCE BURDEN THAT RESTS ON TAXPAYERS, AND THEY MUST BE SURE TO TREAD LIGHTLY.

Perhaps it is evident, based on the extent of the information SARS now requires, that taxpayers are cautioned to measure twice and cut once regarding the disclosures made to SARS for the AIT Pin.

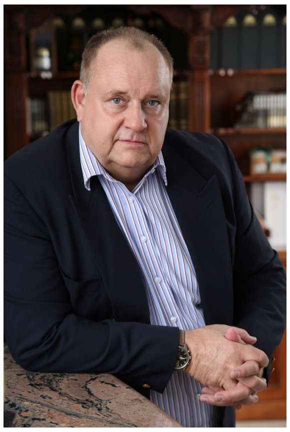
CONCLUSION

For SA investors without offshore investments, the signs are as clear as daylight: they need to move their annual investment allowances offshore every year.

Taking money in excess of the annual R1m allowance offshore every year will require a lot more paperwork and patience than previously. We will need to tackle the obstacles as they arise and remember that these are not our requirements, but those imposed by SARS.

As it is, the local asset managers are already up against the 45% offshore limitations and have started imposing curbs on some of their offshore feeder funds. However, the increased paperwork for foreign investment approvals - which in many cases was being invested with global investment companies - could see a resurgence in local investors using current asset swap capabilities, which might also not last for long.

MAGNUS HEYSTEK | Investment Strategist and Director at Brenthurst Wealth



Over the past decade, independent financial advisor, Magnus Heystek, has very publicly delivered a consistent message – move your money out of of SA. He has been spot on.

As a result, clients at the company he started, Brenthurst Wealth, have profited as misgovernance hammered the rand, and rising global investment markets also far outperformed the JSE. In this powerful keynote to the 5th BizNews Conference at the Drakensberg Sports Resort, Heystek reiterated his message, providing fresh evidence to support his argument that it's unlikely there will be a reversal of the trend anytime soon.

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SOURCE: BNC#5: Brutally honest Magnus Heystek: Fresh reasons why you MUST move your money away from South Africa
>> READ THE FULL ARTICLE HERE

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