
GOVERNMENT NOTICE

NATIONAL TREASURY

No. 999

1 November 2010

AMENDMENT OF THE EXCHANGE CONTROL REGULATIONS MADE UNDER SECTION 9 OF THE CURRENCY AND EXCHANGES ACT, 1933 (ACT NO. 9 OF 1933)

The President has, under section 9 of the Currency and Exchange Act, 1933 (Act No. 9 of 1933), made the regulations in the Schedule, whereby the Exchange Control Regulations published by Government Notice No. R. 1111 of 1 December 1961, as amended, are further amended.

SCHEDULE

Definition

1. In these regulations "the Regulations" means the Exchange Control Regulations published by Government Notice No. R. 1111 of 1 December 1961, as amended by Government Notices Nos. R. 872 of 3 June 1966, R. 1647 of 21 October 1966, R. 650 of 19 April 1968, R. 1555 of 15 August 1975, R. 355 of 5 March 1976, R. 357 of 20 February 1981, R. 2610 of 30 November 1984, R. 157(P) of 1 September 1985, R. 2868 of 23 December 1985, R. 957 of 4 May 1987, R. 1416 of 23 June 1987, R. 224 of 19 February 1988, R. 881 of 29 April 1988, R. 1472 of 18 July 1988, R. 427 of 12 March 1995, R. 1022 of 1 August 1997 and R. 885 of 23 July 1999.

Insertion of Regulation 24

2. The Regulations are hereby supplemented, by the insertion of a new Regulation to address administrative relief, as set forth hereunder.

24 Administrative Relief

- (1) The Treasury, or a person authorised by the Treasury, may authorise the regularisation of any contravention of these Regulations by allowing a person who has so contravened, to disclose such contravention to the Treasury, or such authorised person, in accordance with the provisions and in the manner set forth in this regulation 24.
- (2) The regularisation of any contravention of these Regulations, by a person who is subject to these Regulations, shall take place on the basis that the Treasury, or a person authorised by the Treasury, may on written notice allow for certain types of contraventions to be regularised on application and by the making of a sworn affidavit or solemn declaration, in writing, of the contravention during the period prescribed, at the address and in the form and manner prescribed, on the basis that –
 - (a) the affidavit or declaration made by such person must be made voluntarily; and
 - (b) the affidavit or declaration must be in respect of a contravention by such person of these Regulations prior to the date prescribed; and
 - (c) such person, when making application in terms of this regulation in respect of any foreign asset, must –
 - (i) disclose the market value of that foreign asset in the foreign currency of the country in which the foreign asset is situated; and

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- (ii) include a description of the identifying characteristics and location of that foreign asset; and
 - (iii) submit, in respect of the market value, in the foreign currency of that foreign asset, as at such date as may be prescribed –
 - (aa) a valuation certificate by a valuator of the country where that foreign asset is located; and/or
 - (bb) a valuation by a sphere of government of the country where that foreign asset is located; and/or
 - (cc) where the asset constitutes a financial instrument, an original or certified copy of a statement of account indicating the balance or market value; and/or
 - (dd) any other form of proof of value of that foreign asset as the Treasury may on good cause shown allow to be submitted; and
 - (d) such person, when making application in terms of this regulation in respect of any contravention of these Regulations, must provide such additional information relating to such contravention, as may be prescribed.
- (3) The provisions of this regulation 24 shall not apply to persons where, on the date on which they are afforded the opportunity to regularise any contravention of the Regulations -
- (a) there is a pending investigation by the Treasury, or any person authorised by the Treasury, into the affairs of such person; or

- (b) an investigation by the Treasury, or any person authorised by the Treasury, into the affairs of such person has commenced as at the date of an application made, or caused to be made, by such person.
- (4) A person who, in terms of subregulation (3), is not permitted to make application for administrative relief, shall be entitled, with the permission of the Treasury and in accordance with such conditions as may be prescribed, to make application for the administrative relief set out in this regulation 24, provided that the Treasury or the authorised representative granting such permission, after having regard to the circumstances of the pending or current investigation into the affairs of such person, is of the view that –
 - (a) the contravention of the provisions of these Regulations, for which application is made for administrative relief, would not otherwise be detected in the ordinary course of any pending or current investigation by the Treasury into the affairs of such person; and
 - (b) allowing such person to make an application, in respect of the contravention of the provisions of these Regulations, would be in the interests of the administration of the Treasury and would be the best use of the resources of the Treasury.
- (5) The Treasury, or any person authorised by the Treasury, may issue a non-binding opinion as to the eligibility for relief from any contravention or failure to comply with the provisions of these Regulations by a person subject to these Regulations, to the extent that it receives sufficient information in respect of such contravention or failure, which information need not include the identity of any party to the contravention or failure.
- (6) If a person complies with the provisions of subregulation (2), in relation to a contravention of these Regulations, the Treasury must, subject to

the provisions of subregulation (7) and subregulation (12), grant relief and regularise any contravention in respect of these Regulations.

- (7) Subject to the provisions of these Regulations and the exclusion in subregulation (3), if any application for the regularisation of a contravention of these Regulations is lodged in terms of this regulation 24 the Treasury, or any person authorised by the Treasury, shall in respect of such person and in respect of the specific contravention set out in such application, not pursue any criminal prosecution, but may -
 - (a) grant to such person 100 per cent relief in respect of any levy payable by such person resulting from the contravention of the provisions of these Regulations; and/or
 - (b) grant a credit in respect of the unutilised portion of the foreign invest allowance of such person; and/or
 - (c) impose a levy in respect of contraventions of the provisions of these Regulations as provided for in subregulation (13); and/or
 - (d) impose any other conditions as may be prescribed.
- (8) The Treasury, or any person authorised by the Treasury, must deliver to the person making application for relief in terms of this regulation 24, a notice of its decision in respect of the granting or refusal, as the case may be, of such application which notice, if favourable, may include such additional conditions as the Treasury or such authorised person may impose, including –
 - (a) the material facts of the relevant contravention of the provisions of these Regulation on which the application was granted; and/or

- (b) details of the levy payable (if any) by such person to the Treasury, including the arrangements and date for payment of such levy; and/or
 - (c) notification of the utilisation by such person of any applicable allowance and as may be prescribed; and/or
 - (d) details, in respect of such contravention, of the applicability of the provisions of these Regulations following the granting of any relief in respect thereof; and/or
 - (e) details of such undertaking and conditions as may be imposed on such person.
- (9) Should it be established, subsequent to the granting of relief in terms of this regulation 24, that such person failed to disclose, in the application lodged with the Treasury in terms of this regulation, any matter that may have been material for the purpose of making the disclosure, the Treasury may declare, on written notice to such person, that –
- (a) any application approved in respect of such person is void and such notice shall set out the reasons therefore; and/or
 - (b) any amount paid by such person pursuant to the notification referred to in subregulation (7) will not be refunded and will be regarded as part payment of any further levies that may be imposed by the Treasury in respect of such contravention of the provisions of these Regulations; and/or
 - (c) criminal prosecution may be initiated in respect of any contravention of the provisions of these Regulations.

save that the Treasury shall not use and may not rely on any information, disclosed to it in any application pursuant to this regulation

24, in any subsequent prosecution of a contravention of the Regulations.

- (10) Any person aggrieved by a decision of the Treasury, or any person authorised by the Treasury, to refuse an application for regularisation or to subsequently withdraw or declare void any application previously approved under this regulation 24, may lodge an objection in the manner prescribed.
- (11) All objections lodged pursuant to and in accordance with subregulation (10), shall be dealt with in the manner prescribed.
- (12) If any person is required, under the notice issued in terms of subregulation (8), to make payment of a levy, the Treasury, or such person authorised by the Treasury, will issue a final notification in respect of the relief granted in terms of this regulation to such person once any such levy has been paid in full; and only upon receipt of such final notification from the Treasury, or such authorised representative, will the application be regarded as approved.
- (13) Any person who has made application in terms of this regulation 24 and whose application has been approved may be required to pay a levy, as prescribed, on the market value, as at the prescribed date, of the foreign asset disclosed or the amount involved in the contravention of the provisions of these Regulations.
- (14) The levy payable, as set out in subregulation (13), must be paid by such person from foreign funds repatriated, or to the extent that such person does not have any foreign funds, the aforementioned levy may be paid from local funds, provided that in such instance an additional levy, as prescribed, will be payable.
- (15) All amounts payable as a levy must be paid by such person to an authorised dealer by no later than the date prescribed after the date of approval of the application and, if paid from foreign funds repatriated,

must be converted into South African Rand by using the ruling spot exchange rate on the date of payment.

- (16) The authorised dealer must pay all amounts received in terms of subregulation (15) into an account held for that purpose at the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), within the period and under the terms prescribed, for subsequent transfer to the National Revenue Fund.
- (17) A reference in this regulation 24 to "prescribed" shall be as prescribed by the Treasury from time to time.
- (18) Any contravention of the Regulations and which has been regularised in terms of this regulation 24 shall, subject to compliance with regulation 24, be deemed not to have been a contravention of these Regulations.
- (19) No person may rely on the provisions of this regulation 24 and claim relief in terms hereof, unless the Treasury, or a person authorised by the Treasury, has in a notice (and within the period stipulated in such notice) authorised the regularisation of a contravention(s) of these Regulations by allowing disclosure of such contravention and which shall take place in the manner set forth herein.

Commencement

3. These Regulations shall take effect on the date of publication in the *Government Gazette*.