

INVESTING 101

June
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Investing Offshore – In this article we aim to provide a concise summary of the options available and restrictions involved when investing offshore

i² offers access to an international investment solution (direct or via an asset swap) structured to achieve your risk and return and objectives.

The following questions and answers have been prepared to assist you in understanding the requirements and process involved when investing offshore:

WHO QUALIFIES FOR THE ANNUAL ALLOWANCE?

Foreign Capital Allowance:

Individuals 18 years and older, **and in good standing with SARS**, can invest up to R10 Million per calendar year abroad, subject to obtaining a SARS tax clearance certificate. In exceptional circumstances, applications for amounts in excess of R10 Million can be submitted to the South African Reserve Bank together with the relevant tax clearance certificate for consideration.

Single Discretionary Allowance:

Individuals 18 years and older are permitted to transfer up to a limit of R1 Million per *calendar year* without the requirement to obtain a tax clearance certificate, while individuals younger than 18 years of age only qualify for a travel allowance of R200 000 per *calendar year*.

Any natural person in good standing with SARS can thus invest a maximum amount of R11 million (R10 million foreign capital allowance and R1 million discretionary allowance) per calendar year offshore. Natural persons are regarded as South African residents if they are domiciled or registered in South Africa for income tax purposes or foreign nationals who have taken up permanent residency in South Africa and have been living in the country for more than five years.

WHO DOES NOT QUALIFY FOR THE FOREIGN ALLOWANCES?

- Legal entities
- Trusts
- Partnerships
- Foundations
- Clubs
- Natural persons under the age of 18 years
- Natural persons who are NOT taxpayers in good standing (Foreign Capital Allowance)

DO I NEED A SARS TAX CLEARANCE CERTIFICATE?

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NOT REQUIRED: Investors wishing to invest offshore using their annual discretionary allowance of up to R1 million per calendar year do not need to obtain a tax clearance certificate from SARS. The discretionary allowance can be used for any legal purpose abroad and the limit includes any spending on foreign travel (e.g. credit card expenditure).

REQUIRED: Investors wishing to invest offshore using their annual foreign capital allowance of up to R10 million per calendar year do need to obtain a tax clearance certificate from SARS, but once the funds have been transferred, all income and gains accrued on the foreign capital may be retained offshore without any further clearance requirements.

The application process is subject to estimated administrative time frames as follows:

- For applications up to R4 million, a foreign tax clearance certificate can be applied for from SARS and is typically approved within 1-3 working days. A foreign tax clearance certificate is valid for a period of 12 months from the date of issue and once expired or fully utilised, you will need to apply for a new foreign tax clearance certificate.
- For applications greater than R4 million, a special application for a "letter of compliance" from SARS is required but this no longer requires additional South African Reserve Bank approval up to R10 million. This process typically takes between 4-10 weeks and may require the taxpayer to submit additional supporting documentation requested by SARS in support of the application.
- For applications greater than R10 million, a special application for a "letter of compliance" from SARS is required but this is also subject to a special approval application which is to be submitted to the South African Reserve Bank. There is no limit on the size of these applications for individuals but they are generally only approved in exceptional circumstances with significant motivation.

In all instances, we highly recommend you seek assistance with the application process.

WHAT OTHER AMOUNTS CAN BE RETAINED OFFSHORE?

In addition to your annual allowances and special approvals, you can retain certain other legal funds offshore, including:

- All growth and income earned or accrued on funds previously transferred in terms of the above allowances.
- All income earned abroad from a foreign employer or inheritances received on or after 1 July 1997 and either retained abroad or remitted to South Africa.
- Own foreign capital introduced into South Africa on or after 1 July 1997.
- Funds for which amnesty was granted in terms of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. 12 of 2003), unless amnesty was granted on the basis that the funds had to be repatriated to South Africa.
- other amounts if specific approval has been obtained from the SARB

DO I HAVE TO TRANSFER THE FULL AMOUNT AT ONCE?

NO, you can transfer in tranches under a valid foreign tax clearance certificate, which has not been fully utilised and did not yet expire. If you intend using the same bank or specialist currency service provider for future transfers, you may request them to keep a copy of your foreign tax clearance certificate on your behalf. The original certificate is required by the bank/authorised dealer, handling your transfer.

IS THIS AN ANNUAL LIMIT?

YES, the allowances are granted per calendar year and expire on 31 December without any carry-forward on un-used amounts. You will qualify for new annual allowances on 1 January each year, subject to any changes announced by the South African Reserve Bank.

HOW PROBLEMATIC IS AN ACCIDENTAL BREACH OF THE ANNUAL LIMIT?

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The South African Reserve Bank maintains a database of all transfers made by all individuals via all banks since the implementation of these allowances in 1996. You, the applicant (not SARS, your bankers, advisors or SARB) are however ultimately responsible for not exceeding the limit. You may be fined between 20% and 40% of the excess transfer amount if you inadvertently exceed the limit. This penalty range, however, only applies if you approach the SARB's Financial Surveillance Department (FSD) first. Otherwise, the full amount in excess of the limit could be confiscated. If you are uncertain regarding a proposed transfer resulting in a breach of your annual limit, carefully check your records. A last resort is to apply to the FSD to check your records.

WHAT IS THE DIFFERENCE BETWEEN AN ASSET SWAP AND AN OFFSHORE ALLOWANCE?

Asset swap investments make use of the permissible offshore allowances available to South African Financial institutions, which are also subject to specific SARB rules. Individuals making use of such investment structures are required to repatriate the funds to South Africa on maturity or redemption of the investment and such investments are thus not subject to exchange control or SARS approval and also have no impact on your foreign capital or discretionary allowances referred to above.

WHAT ARE THE ESTATE DUTY IMPLICATIONS?

Foreign investments are included as property in your estate and are therefore subject to estate duty. It is important to understand the structure of your offshore investment as well as the jurisdiction it is invested in because you could be subjected to individual and estate duty taxation in the foreign jurisdiction as well. Certain jurisdictions are also not party to South African tax treaties to avoid double taxation.

SHOULD I HAVE A FOREIGN WILL AND APPOINT A FOREIGN EXECUTOR?

In most instances, a foreign Last Will and Testament would not be required and the resident's South African Last Will and Testament would apply to his or her worldwide assets but it is important to specify this point. Where the assets are held in locally registered endowment structures, a foreign Last Will and Testament is also not necessary.

Where however you own significant and complex foreign assets, it is recommended that you consult your advisor or a specialist in this field to facilitate the provision of specialist advice.

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