

Ref: # 777036

7 April 2026

The Financial Surveillance Department  
South African Reserve Bank  
370 Helen Joseph Street  
Pretoria  
0001

By email:  
Cc

## **THE NEED FOR GREATER ADMINISTRATIVE CERTAINTY AND FAIRNESS IN RESPECT OF EXCHANGE CONTROL ADMINISTRATION**

The Exchange Control Subcommittee of the South African Institute of Chartered Accountants (SAICA) hereby makes a submission to the Financial Surveillance Department ('Finsurv') of the South African Reserve Bank ('SARB') on the need for greater administrative certainty and fairness in respect of Exchange Control administration.

We once again thank Finsurv for the ongoing opportunity to engage with us on crucial matters of exchange control, and look forward to further engagement on this matter.

**Robyn Berger**  
Chairperson: Exchange Control Subcommittee

**Lesedi Seforo**  
Lead: Tax Advocacy (Tax Law)

*The South African Institute of Chartered Accountants*



1. Under the Currency and Exchanges Act, the Governor General has the power to make rules about anything related to money, banking, or currency exchange. These rules allow the government (specifically, National Treasury ['NT'] and its proxy, the Finsurv) to take strong actions if they suspect someone has broken the rules, such as:
  - a. Freezing or seizing money or property for up to 36 months.-
  - b. Getting court orders to stop someone from using or moving that money or property.
  - c. Taking away (forfeiting) the money or property and disposing of it (selling or using it) if it is connected to a crime or suspected crime.
2. This can apply if the money or goods:
  - Are linked to a crime under these rules,
  - Are in the possession of someone who committed or is suspected of committing the crime, or
  - Were gained as a result of the crime.
3. However, if someone innocently and legally bought or received the money or goods during normal business — and did not know about the crime — then the government cannot seize these assets.
4. The President can also allow NT to go after other money or goods belonging to the offender or anyone else, if the original items cannot be recovered for some reason.
5. You can challenge the decision in court. However, the court will only overturn the action if:
  - The government did not follow the rules properly,
  - There were no good reasons to take the action, or
  - The reasons no longer apply.
6. If your property is forfeited and disposed of (i.e. taken away and sold or used), NT must:
  - Publish a notice in the Government Gazette, and
  - Send you a copy of the notice by registered mail to your address or last known address.
7. If you are unhappy with this decision, you have 90 days from the date of the notice to take legal action in court.
8. Again, the court will only reverse the decision if:
  - The rules were not followed,
  - The government did not have valid reasons, or
  - The reasons no longer exist.

9. The above rules are enforced through the application of the Exchange Control Rules, more specifically regulations 22, 22A, 22B, 22C and 22D.
10. It is further important to highlight that regulation 24 contains provisions dealing with administrative relief.
11. Regulation 24 states that NT, or a person authorised by NT (in this case, Finsurv), may authorise the regularisation of any contravention of these Regulations by allowing a person who has so contravened, to disclose their contravention to Finsurv in accordance with the provisions and in the manner outlined in regulation 24.
12. The law is prescriptive, whereby it states that if a person complies with the requirements of administrative relief and they are not currently the subject of an audit/investigation, the Finsurv must grant relief and regularise any contravention in respect of these Regulations, whereby they may not pursue criminal sanction against the party making the disclosure, and can, at their discretion, grant full relief in respect of any levy payable by such person resulting from the contravention of the provisions of the Regulations.
13. The question that arises is the fairness of the above rules, both in terms of process and powers, when considering regularisation applications submitted voluntarily by Applicants for contraventions that are not criminal matters.
14. It is important to point out that not all exchange control contraventions are criminal matters. In most instances, it is simply commercial transactions undertaken without the parties realising that specific approvals must be obtained, and reporting obligations adhered to, through an authorised dealer.
15. In tax law, there is arguably a far more reasonable approach to matters of disputes, aimed at delivering far greater certainty and efficiency for both taxpayers and SARS.
16. By way of example, in all but the most serious cases, before any disputed amounts become due and payable by a taxpayer, SARS must have first conducted an audit, delivered its findings and issued an assessment to the taxpayer for the tax found to be owing.
17. This means that an engagement between SARS and the taxpayer would have already taken place prior to SARS making a final decision on liability, with the taxpayer having an opportunity to present their case as part of the audit process.
18. Where the taxpayer intends to challenge the findings of SARS (i.e. object to additional assessments raised by SARS), the “pay now, argue later” principle applies; but there are additional safeguards in the form of SARS’ discretion to suspend the obligation to pay a disputed amount pending the outcome of a dispute.
19. Taxpayers who genuinely dispute the liability raised by SARS and have a good compliance history, and taxpayers which are unable to make payment of the disputed tax while arguing their case may be granted a stay of payment in whole or in part on the back of other security or undertakings offered to the SARS (e.g. it may be that only part of the tax is paid while the matter is subject to dispute).
20. What is most notable is that there is a clear set of rules of engagement that apply to SARS and taxpayers both during an audit and during the process where a taxpayer is disputing

a revised assessment, which incorporates the constitutional right to fair, lawful and reasonable administrative action into the exercise of SARS' powers under the Tax Administration Act.

21. This allows all parties fair and reasonable engagement and prevents matters from dragging on indefinitely, especially when they are matters that can be easily resolved between the parties.

22. No doubt Finsurv and NT can appreciate that the manner in which the exchange control law is currently drafted and applied, whereby:

- a. monies are placed on blocking order prior to any investigation being conducted (simply on suspicion), and
- b. monies can be held for a period of up to 36 months, with the option to apply to the courts for a longer period,

is unfair procedurally.

23. The lack of timing rules imposed on Finsurv to prioritise investigations where monies are being held on blocking order prejudice a party's rights to reasonable and procedurally fair administrative action. In terms of the general principles that decisions must be rationally connected to the facts and circumstances before the decision-maker and proportional in relation to the facts and circumstances of the matter, as well as the requirement that where there is an obligation to take a decision or exercise a discretion (i.e. to conduct and finalise an investigation into suspected unlawful conduct), the decision must be taken and proceedings finalized within a reasonable period.

24. Turning our attention now to the Administrative relief provisions, again, these provisions differ materially from what is prescribed in tax law.

25. The tax law is drafted to encourage parties to present their tax errors for regularisation without fear of penalties being imposed – a key aspect of voluntary disclosure relief is the waiver of administrative penalties and understatement penalties.

26. SARS also has a broad discretion to reduce or remit penalties in full, following representations by the taxpayer in mitigation. Regulation 24, which contains the administrative relief provisions, allows the Finsurv, solely at its discretion, the ability to impose penalties even where parties are voluntarily presenting their mistakes for regularisation to the Finsurv.

27. Submission: We strongly suggest that this should be amended to prohibit the imposition of penalties unless some form of criminal intent is found to be present or there is some form of dishonesty involved.

28. We include below the table that is applied in tax law to determine the extent of penalties that can be applied:

1	2	3	4	5	6
---	---	---	---	---	---

<b>Item</b>	<b>Behaviour</b>	<b>Standard case</b>	<b>If obstructive, or if it is a 'repeat case'</b>	<b>Voluntary disclosure after notification of audit or criminal investigation</b>	<b>Voluntary disclosure before notification of audit or criminal investigation</b>
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	'Impermissible avoidance arrangement'	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%

29. The law prescribes that SARS must remit a 'penalty' imposed for a 'substantial understatement' in certain instances.

30. This includes where the taxpayer takes advantage of the voluntary disclosure program (subject to the limited penalties that can be imposed under column 5 and 6), or where the taxpayer does not use the voluntary disclosure process, but the taxpayer made full disclosure of the arrangement in its timely filing and was in possession of an opinion by an independent registered tax practitioner based upon full disclosure of the specific facts and circumstances of the arrangement that, inter alia, confirmed that the taxpayer's position is more likely than not to be upheld if the matter proceeds to court.

31. Perhaps it would be possible for SARB to consider introducing legislation similar to this that allows far greater certainty and fairness.

32. Furthermore, taxpayers are also afforded two possible relief avenues before having to place reliance on the courts. The reason being that matters addressed in the courts are extremely costly and it is highly prejudicial to the average business to have no avenue outside of the courts to challenge findings of Finsurv where Finsurv has access to funds from National Treasury to challenge matters in court.

33. The first relief available to taxpayers is the Office of the Tax Ombud ('OTO').

34. The main purpose of the OTO is to ensure that taxpayers are treated fairly and efficiently by SARS and this is a most powerful tool to help taxpayers seek relief without having to incur significant legal fees.

35. The second is the Tax Board.

36. This is a forum set up in law that affords taxpayers the ability to dispute matters outside of the formal court system, thereby allowing a more cost efficient and timeous resolution of the matter.

37. Submission: Finsurv and NT are kindly urged to work together with SARS to institute laws that afford South African citizens a far more fair playing field with clear rules of engagement when it comes to disputes related to exchange control contraventions.

38. We reiterate that criminal matters should have their own set of rules, but common exchange control contraventions that are not linked to criminal or dishonest activities should not be resulting in such lengthy, punitive and inefficient processes.

END.