Loop Structures - Planning Opportunity for South Africans

Introduction

The abolishment of restrictions on so-called ‘loop structures’ earlier this year was welcomed by many South African businessmen and -women and their advisors. A loop structure comes into existence when a South African (exchange control) resident invests in a foreign company or similar structure which in turn directly or indirectly owns assets in the Common Monetary Area, which includes South Africa.

The objective of the change was said to "encourage inward investment into South Africa" by, for instance, allowing South Africans to partner with international counterparts to acquire South African assets through foreign legal structures. The view of South Africa's National Treasury was that the liberalization of our exchange control regulations would "further encourage investment and reaffirm South Africa as an investment and financial hub within Africa".

CORPAG

Corpag Services South Africa (Pty) Ltd

Suite 1603
Portside Building
4 Bree Street, Cape Town
Western Cape 8001
South Africa

T: +27 83 284 7380
southafrica@corpag.com
www.corpag.com

Planning opportunities

Apart from promoting investment into South Africa, this change also created several planning opportunities in terms of South African tax legislation. Examples include certain exemptions on foreign dividends, exemptions on the sale of foreign shares as well as reduced withholding tax rates in terms of certain Double Tax Agreements with other jurisdictions. South African tax residents may therefore benefit on several fronts by using international asset holding structures.

The change applies to all private individuals, companies and private equity funds which are tax resident in South Africa. The initial circular which was issued by the South African Reserve Bank was silent as to whether this relaxation will apply to foreign trusts; however, it is our understanding that it does apply to foreign trusts, on the condition that certain compliance requirements are met.

The obligation to report all inward investment to the Financial Surveillance Department of the South African Reserve Bank remains effective.

Conclusion

The relaxation of the prohibition on 'loop structures' is a welcome regulatory change which allows South Africans to hedge against domestic political, economic and currency risk, whilst still maintaining their investments in high-yielding South African business and property.

At Corpag, we can assist with establishing, managing and administering international business and asset holding structures in a compliant manner to enable clients to benefit from this regime change. However, we strongly recommend that formal South African tax and exchange control advice be sought before any decisions are made.

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