

If you are a South African permanent resident, you can utilise your individual offshore allowance of R4 million by investing in a foreign currency denominated unit trust fund. To do so, you will need to apply for a [Tax Clearance Certificate](#) (i.r.o. Foreign Investment Allowance for Individuals) from the South African Revenue Service (SARS) website and complete the required [exchange control form](#) with an authorised dealer bank.

Depending on your need, Coronation offers a [focused range of dollar-denominated international funds](#), providing access to both developed and emerging markets in a pure equity or multi-asset portfolio. Immigrants\* and non-residents are also able to invest in Coronation's range of dollar-denominated international funds, but are not subject to the individual offshore allowance regulations.

The following questions and answers have been prepared to assist you in understanding the requirements and process involved and also to provide you with a general overview of the basic exchange control and tax consequences of such an investment.

*Please note that this summary is not intended to constitute a comprehensive guide to the exchange control considerations and tax treatment of your foreign investment. If you are in any way uncertain, we recommend that you obtain appropriate independent advice prior to making an investment.*

#### WHO QUALIFIES FOR THE ANNUAL R4 MILLION FOREIGN INVESTMENT ALLOWANCE?

A foreign investment allowance is currently available for natural persons who are:

- taxpayers in good standing; and
- over the age of eighteen years

Each individual may invest an amount of up to R4 million per annum offshore.

Natural persons are regarded as South African residents if they are domiciled or registered in South Africa (for example if they were born in South Africa and lived in the country all their life) or foreign nationals who have taken up permanent residency in South Africa and have been living in the country for more than five years.

South African residents are subject to exchange control restrictions and can therefore only invest in offshore assets such as foreign unit trusts within certain restrictions set by the South African Reserve Bank (SARB).

#### WHO DOES NOT QUALIFY FOR THE FOREIGN INVESTMENT ALLOWANCE?

- Legal entities
- Trusts
- Partnerships
- Foundations
- Clubs
- Natural persons under the age of eighteen years
- Natural persons who are NOT taxpayers in good standing

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\* Immigrants become subject to exchange control regulations after five years of residency, subject to certain concessions.



### DO I NEED A SARS TAX CLEARANCE CERTIFICATE?

**YES.** You are required to apply for tax clearance by downloading the latest [Tax Clearance Certificate](#) (i.r.o. Foreign Investment Allowance for Individuals) application form and submitting the duly completed form to SARS. A 'Tax Clearance Certificate' is valid for a period of 12 months. Should the certificate expire unutilised or partially utilised, you will need to apply for a new certificate.

### HOW LONG WILL IT TAKE TO GET A SARS 'TAX CLEARANCE CERTIFICATE'?

This depends on your specific SARS office and your tax status. In some instances you will be able to obtain a certificate in less than a week, but it may take longer. Please ask your local SARS office as to the expected time frame when applying.

### WHAT IS THE MAXIMUM AMOUNT I CAN TRANSFER OFFSHORE?

You can transfer a maximum of R4 million per annum from South Africa.

You may, however, be able to invest more than the annual R4 million if you have other 'legal' funds offshore, for example:

- growth/income on previously transferred funds where such income was retained abroad;
- income earned abroad from a foreign employer after 1 July 1997 and either retained abroad or remitted to South Africa;
- foreign inheritances;
- own foreign capital introduced into South Africa on or after 1 July 1997; or
- 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.

### CAN I USE OTHER OFFSHORE ASSETS TO INVEST IN THE CORONATION FUNDS?

**YES**, if these assets are, or originate from, previous foreign capital allowance transfers, or from the sources referred to above.

**NO**, if the assets represent funds held offshore in contravention of the exchange control policies, e.g. an unutilised portion of a travel allowance.

### DO I HAVE TO TRANSFER THE FULL AMOUNT AT ONCE?

**NO**, you can transfer in tranches, provided your 'Tax Clearance Certificate' has not expired. Please ensure that you retain your original certificate if the full R4 million is not utilised in one transaction. If you intend using the same bank for future transfers, you may request the bank to keep a copy of your 'Tax Clearance Certificate' on your behalf.

### IS THIS AN ANNUAL LIMIT?

**YES**

### CAN I BORROW FUNDS OFFSHORE?

**YES**, provided there is no recourse to South Africa (e.g. guarantees or surety to an overseas lender from South African sources).



### CAN I BORROW FUNDS FROM ANOTHER SOUTH AFRICAN RESIDENT?

**YES**, provided this is not viewed as a scheme of arrangement to bypass exchange control restrictions. It is generally permissible to borrow funds from another family member (such as a parent or spouse) or even a family trust. If you have any doubts about a particular loan, please obtain an opinion from your banker or financial advisor.

### HOW PROBLEMATIC IS AN ACCIDENTAL BREACH OF THE ANNUAL R4 MILLION LIMIT?

The SARB maintains a database of all transfers made by all individuals via all banks since the implementation of this allowance in 1996. You, the applicant (not Coronation, SARS, your bankers, advisors or the 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 R4 million limit, carefully check your records. A last resort is to apply to the FSD to check your records.

### DOES CAPITAL GAINS TAX (CGT) RATHER THAN INCOME TAX APPLY TO THE GAIN REALISED ON THE SALE OF A FOREIGN COLLECTIVE INVESTMENT SCHEME (CIS)?

The short answer is that as long as you are a long-term investor, the answer to this question will virtually always be **YES**.

The disposal of units could attract either income tax (at a maximum marginal rate of 40%) or CGT (at a maximum effective rate of 10%). If the units were held as capital assets, the gain (i.e. the difference between your proceeds and the base cost of the units disposed of) should be subject to CGT. If the units were held for speculative purposes, the proceeds on disposal will be subject to income tax.

To determine whether the units were held as capital assets or trading stock, the intention of the seller is taken into account, as well as the period of ownership. Section 9C of the Income Tax Act No 58 of 1962 contains a 'safe harbour' provision in terms whereof the gains from the sale of qualifying shares will be treated as capital in nature, if the owner held such shares for a period of at least three years. However, the units in a foreign CIS do not qualify for such protection and it will therefore be necessary to apply the 'normal rules' relating to the intention of the seller as well as the period of ownership, to determine whether the proceeds will be subject to income tax or CGT.

Until the Taxation Laws Amendment Act 2010, a disposal of units included both a redemption instruction given to Coronation and a sale to a third party. However, the new amendments to the definition of a 'foreign dividend' may imply that the gain on redemption would qualify as a foreign dividend, subject to tax at 40%. National Treasury has indicated that this was an oversight and will be rectified in the next amendments.

A disposal of units is defined for tax purposes to include both a redemption instruction given to Coronation and a sale to a third party.

A disposal can also take place in a number of other instances, for example:

- a deemed disposal in the event of the death of the unit holder; or
- a transfer between spouses, including a transfer in the event of the death of the unit holder or in terms of a divorce order.



## WHAT ARE THE TAX CONSEQUENCES OF A DISPOSAL, ASSUMING THAT THE UNITS ARE HELD AS CAPITAL ASSETS?

- In the case of the disposal (or deemed disposal) of units, the difference between the proceeds (or deemed proceeds) on disposal and the seller's base cost\* in the units, will be subject to CGT.
- Where the units are transferred between spouses, there will be no capital gain on the transfer, but the transferee spouse will effectively step into the shoes of the transferor spouse; with the result that the gain will be subject to CGT only at the time when the transferee spouse disposes of the units. Such roll-over relief will not apply where the transferee spouse is non-resident for tax purposes;
- On the death of the unit holder, the deceased will be deemed to have disposed of the units at market value, i.e. CGT will be triggered in such case. This rule does not apply where the units are bequeathed to the deceased's spouse, in which case the roll-over relief referred to above applies.

## WHAT ARE THE TAX IMPLICATIONS OF INCOME DISTRIBUTIONS ON A FOREIGN COLLECTIVE INVESTMENT SCHEME (CIS)?

Note that the Coronation Funds are currently structured as roll-up funds. This means that any investment income earned in the portfolio is reinvested in the fund for future capital growth. As a result, there is no investment income earned or distributed by Coronation's foreign CIS.

A foreign CIS is treated as a foreign company under the Income Tax Act. Dividends (or distributions) paid by foreign companies are subject to income tax in the hands of South African resident unit holders, although the first R3 700 is exempted in the hands of individual investors in the 2011 year of assessment. The exemption must first be applied to foreign dividends and then to foreign interest.

Distributions by a foreign CIS may also be exempt if the unit holder qualifies for the so-called participation exemption. This exemption is however seldom available to individual unit holders as it requires, inter alia, that the individual holds a minimum of 20% of the total equity share capital and voting rights of the company (or foreign CIS) that distributed the dividend.

## CAN GAINS ON MY INVESTMENT BE DEEMED TO BE FOREIGN DIVIDENDS FOR TAX PURPOSES?

As a general rule, any amount received by a shareholder that exceeds the amount of the capital invested is treated as a dividend. As noted above, all foreign dividends are taxable. If this general rule is applied, a dividend received by an investor in a foreign CIS will therefore generally be subject to income tax.

The definition of 'dividend' in the Income Tax Act specifically excludes any amount distributed by way of the redemption of a participatory interest in a foreign CIS. Therefore, until the recent introduction of the new definition of a 'foreign dividend', the gain on redemption was not regarded as a taxable (foreign) dividend. However, the new definition of a 'foreign dividend' merely refers to the applicable definition in the foreign jurisdiction, which may imply that the gain on redemption may be treated as a foreign dividend. National Treasury has indicated that the exemption in respect of such a redemption under the definition of a 'dividend' should also apply in respect of the definition of a 'foreign dividend' and that this would be rectified in the next round of amendments to the Income Tax Act.

\* Three asset identification methods for determining the base cost of identical assets such as unit trusts exist, namely weighted average cost, specific identification and first in first out. Coronation has adopted the weighted average cost methodology which, in essence, involves keeping running totals of the number of units bought and sold in a particular fund.

Coronation will disclose the following information to you to allow you to calculate your tax liability: number of units disposed, cost of those units disposed, proceeds on disposal of those units; and gain derived from, or loss incurred in respect of the disposal of those units.

Unit holders who do not wish to use the weighted average cost method to determine capital gains on the disposal of their units are not bound by the return provided by Coronation. However, they will have to keep the necessary records to support the alternative they select.



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## WHAT ARE THE ESTATE DUTY IMPLICATIONS?

Foreign investments are included as property in your estate and are therefore subject to estate duty.

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

**Not necessarily.** In most instances a foreign will would not be required and a resident's South African will would apply to his/her worldwide assets. However, should you own significant and complex foreign assets it is recommended that you consult an attorney in the relevant foreign jurisdiction for legal advice and assistance.

## HOW DO I REDEEM OR REPATRIATE MY OFFSHORE INVESTMENT?

The policies allowing individual SA residents to transfer funds offshore and to retain certain assets offshore also allows for the holding of foreign bank accounts and currency denominated accounts with your local SA banker. If you wish to redeem an offshore investment, Coronation can transfer the redemption proceeds to another offshore destination via a third party (offshore anti-money laundering legislation permitting); transfer the proceeds to an offshore bank account in the name of the investor, or transfer the proceeds to a currency account in South Africa (FICA & other legislation permitting).

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### DISCLAIMER

All information and opinions provided are of a general nature and are not intended to address the circumstances of any particular individual or entity. As a result thereof, there may be limitations as to the appropriateness of any information given. The information set out above is a basic summary of the relevant principles and it is imperative that any proposed investor obtains detailed advice, in the context of his/her specific circumstances, prior to making an investment. It is therefore recommended that the client first obtain the appropriate legal, tax, investment or other professional advice and formulate an appropriate investment strategy that would suit the risk profile of the client prior to acting upon information. Coronation is not acting and does not purport to act in any way as an advisor or in a fiduciary capacity. Coronation endeavours to provide accurate and timely information but we make no representation or warranty, express or implied, with respect to the correctness, accuracy or completeness of the information and opinions. The information set out herein is based on enacted legislation at the time of publication, but it should be noted that the legislation and practices referred to are subject to change from time to time. Coronation does not undertake to update, modify or amend the information on a frequent basis or to advise any person if such information subsequently becomes inaccurate. Investors are therefore urged to ensure that they obtain independent, updated advice on an ongoing basis. Any representation or opinion is provided for information purposes only. Coronation Fund Managers Limited & its subsidiaries will not be held liable or responsible for any direct or consequential loss or damage suffered by any party as a result of that party acting on or failing to act on the basis of the information provided in this document.