



MoneyTalk

Small Business Tax Amnesty: Draft regulations provide more opportunities

The extraordinarily generous small business tax amnesty came into operation on 1 August 2006 and continues until 31 May 2007. One of its limiting provisions, found in section 10 of the Amnesty Act, is that persons may not apply for amnesty in respect of taxes, interest, penalties or additional taxes payable in consequence of information furnished to SARS by the applicant, or in respect of any assessment issued by SARS, before the application was made. In other words, if you have submitted a VAT return, for example, you may not withdraw the return and instead seek amnesty for the VAT due on that return. Equally, having received a tax assessment, you may not ask for it to be withdrawn and apply instead for amnesty for the tax due in terms of the assessment.

However, the Act did hold out some hope for persons caught by these provisions. The Minister of Finance may issue regulations enabling the Commissioner for SARS to waive any additional tax, penalty or interest payable on such taxes, where such a waiver would "facilitate the purpose and objective of the tax amnesty". The regulations contemplated have now been issued in draft form.

The draft regulations refer collectively to additional tax, penalty and interest on the various taxes for which amnesty may be applied as "business tax debt". It might be appropriate to remind readers that the taxes covered by the amnesty are: income tax, employees' tax; VAT; withholding tax on royalties; STC; UIF contributions; and SDL contributions. Where any of these taxes or levies are payable but disqualified from amnesty by section 10, the Commissioner may waive some or all of any related business tax debt.

The way to apply for a waiver is prescribed in the draft regulations:

- application must be made by 31 May 2007;
- in the prescribed manner and form (not yet published);
- accompanied by a statement of assets and liabilities as on 31 December 2006;

- with all returns still outstanding as on 31 December 2006, although persons who have already applied for amnesty, and who would not be required to furnish such returns were amnesty to be granted, need not furnish them unless and until their applications have been denied.

As is the case with amnesty applications, reasonable estimates will be acceptable provided they are so described.

Business tax debt will not be waived where the relationship between the taxpayer and SARS has reached the point where the Sheriff of the High Court has attached the assets of the taxpayer in execution of a writ in favour of SARS, or where the Commissioner has given notice to the taxpayer of a SARS audit or investigation. Finally, there may not be a waiver where sequestration or liquidation proceedings have commenced against the taxpayer.

Similarly to the tax amnesty provisions, the Commissioner must approve a waiver if the applicant complies with the above requirements. However, he will not be bound by the waiver if it transpires that the applicant has failed to make full disclosure of all information required, or has supplied materially incorrect information, or fails to comply with any condition imposed by the Commissioner. In such a case interest may be charged on the tax business debt from 1 August 2006.

There are two limitations relating to the waiver of tax business debt: only debt outstanding on 31 July 2006 may be waived, and then only to a limit of R1 million per applicant.

If a waiver is granted, the applicant must undertake to settle the outstanding balance of the business tax debt within six months or such longer period as the Commissioner may determine. The Commissioner has the power to impose any other conditions that he deems necessary.

Clients are reminded that the clock is ticking towards the 31 May 2007 closing date and anyone who qualifies for the tax amnesty should hasten to make use of it.

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