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MoneyTalk

Small Business Tax Amnesty (Bill B14-2006) & FAQ

On 10 May 2006, a Deneys Reitz Taxmail (at our *MoneyTalk* publication at the time) discussed the proposals for a Small Business Tax Amnesty as set out in a draft bill. The draft has since been released as Bill 14-2006. This Taxmail discusses the latest proposals, which incorporate submissions put to and adopted by the Parliamentary Standing Committee on Finance. The bill is to be signed into law by the State President before 1 August 2006. In brief, submissions made by Deneys Reitz and others have resulted in the following significant changes –

- the total annual gross income of a “person” eligible to apply for amnesty has increased from R5 million to R10 million;
- the tax amnesty levy has reduced from 10% of determined taxable income to a maximum of 5% of determined taxable income. A table has been introduced to determine a tax amnesty levy ranging from 2% to 5% of taxable income based on a rising scale;
- a significant flaw in the draft bill, in the definition of “qualifying period”, which could have caused serious financial consequences for an applicant and acted as a serious disincentive to apply for amnesty, has been addressed.

This Tax Mail provides an update on the Amnesty in a “Question and Answer” format.

Q1: Who may apply for amnesty?

A: • Any natural person, including a deceased or insolvent estate of a natural person, or

- An unlisted company, all the shares or members’ interests of which were held directly by natural persons throughout the “2006 year of assessment”. Furthermore the company must have been unlisted throughout the “qualifying period”; or
- A trust, all the beneficiaries of which were natural persons throughout the “2006 year of assessment” and
- The total gross income of the applicant must not exceed R10 million for the “2006 year of assessment”. If the person’s financial year was less than or greater than 12 months, the R10 million must be adjusted proportionately.

Q2: What does “2006 year of assessment” mean?

A: Generally speaking, the “2006 year of assessment” means a tax year ending during the period 1 April 2005 to 31 March 2006. In other words if the person’s tax year ends on 30 June, the “2006 year of assessment” will be the tax year starting on 1 July 2004 and ending 30 June 2005.

Q3: What does a “qualifying period” mean?

A: Generally speaking, a “qualifying period” means all tax years and tax periods ending before the “2006 year of assessment”. For example if an applicant has a tax year ending 30 June, which means it will have a “2006 year of assessment”, running from 1 July 2004 to 30 June 2005, the taxes stated in question 2 will be indemnified up to 30 June 2004. The “qualifying period” will differ from taxpayer to taxpayer depending on whether amnesty is applied for income tax, STC, royalty’s withholding tax or other taxes. Professional advice is recommended.

Q4: Unlisted company B’s shares are all held by Company A. Can Company B apply for amnesty?

A: No, as the applicant must be an unlisted company all the shares of which must be directly held by natural persons.



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Q5: What taxes will be indemnified by the amnesty?

A: • Any income tax unpaid during the “qualifying period”;

- Any PAYE in respect of any remuneration paid to employees during the “qualifying period”;
- Any VAT payable during the “qualifying period”;
- Any withholding tax on royalty’s payable during the “qualifying period” to any non-resident;
- Any STC payable in respect of dividends declared during the “qualifying period”;
- Any unemployment insurance contributions in respect of any remuneration payable during the “qualifying period”;
- Any skills development levies payable during the “qualifying period”.

Q6: Will estate duty, donations tax or customs and excise duties be indemnified?

A: No.

Q7: How do I apply for tax amnesty?

A: An applicant must apply for amnesty in the prescribed form and manner within the period 1 August 2006 – 31 May 2007.

Q8: What information will be required on application?

A: The applicant must –

- Disclose the taxable income from the carrying on of business during the “2006 year of assessment”;
- Furnish an income tax return for the “2006 year of assessment”;
- Furnish a statement of all assets and liabilities, at cost, as at the end of the “2006 year of assessment”.

Where the applicant cannot provide full particulars in the application or in the tax return or in the statement of assets and liabilities, reasonable estimates may be used and disclosure must be made that estimates have been used.

Q9: What is regarded as “reasonable”?

A: Guidelines have not been issued by the South African revenue Service as to what will be regarded as “reasonable”. In the result, the ordinary meaning of “reasonable” will apply.

Q10: Under what circumstances will the Commissioner not approve an application?

A: If the Commissioner, at any time before the submission of the application, delivered a notice to the applicant or that applicant’s representative, informing that applicant of an audit, investigation or “other enforcement action”, that taxpayer may not apply for amnesty. However if the Commissioner has delivered a notification to the taxpayer that the notice has been withdrawn or the audit/investigation has been concluded, prior to the submission of an application, the Commissioner may approve the application.

Q11: What does “other enforcement action” mean?

A: An “other enforcement action” will be prescribed by the Commissioner by notice in a Gazette to be published.

Q12: How do I calculate the Tax Amnesty levy?

A: The Tax Amnesty levy is calculated by applying prescribed rates to the taxable income earned by an applicant, from carrying on a business, for the “2006 year of assessment”. The rates to be applied are-

- 0% of so much of taxable income as does not exceed R35 000;
- 2% of taxable income as exceeds R35 000, but not exceeding R100 000;
- 3% of taxable income as exceeds R100 000, but not exceeding R250 000;
- 4% of taxable income as exceeds R250 000, but not exceeding R500 000;
- 5% of taxable income as exceeds R500 000.



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Q13: Can I take into account any balance of any assessed loss or assessed capital loss, STC credit or VAT input carried forward from any year of assessment preceding the "2006 year of assessment"?

A: No.

Q14: When must the amnesty levy be paid?

A: The amnesty levy must be paid to the Commissioner within 12 months after the date on which notice of approval was delivered, or such longer period as the Commissioner may allow.

Q15: Will I be charged any additional tax, penalties and interest if I receive amnesty?

A: No additional taxes, penalties or interest will be charged in respect of any amount for which amnesty has been granted.

Q16: Under what circumstances will tax amnesty relief not apply?

A: Tax amnesty relief will not apply to the extent that

- Any tax, levy, contribution, interest, penalty or additional tax has already been paid before the date of application, or is payable or becomes payable in consequence of any information which was furnished to the Commissioner before the date of application;
- The applicant has been assessed by the Commissioner before a submission of the application,
- Any VAT has not been paid as a result of a false declaration regarding the acquisition, import or export of goods or services that did not actually occur.

Q17: When would the granting of amnesty be void?

- A: • If the applicant fails to pay the full amount of the tax amnesty levy within the period prescribed;
- The applicant fails to make full disclosure of any information required in the application;
 - Any estimate provided is materially incorrect.

Q18: What happens if my amnesty application is denied?

A: An applicant who is unsuccessful may object and appeal against the Commissioner's decision. The Income Tax Special Court may hear any appeal.

Q19: If I carried on business prior to the "2006 year of assessment", say in the 2003 tax year, and I terminated my business in 2004, can I still apply for amnesty, and what amnesty levy would I have to pay?

A: You may still apply for amnesty even though you did not trade in the 2006 year of assessment. In the result, if the taxable income for the 2006 year of assessment is R nil, your tax amnesty levy will be R nil, but you will still receive amnesty.

As the bill is amended and finalised, further updates may be published.

This article is extracted from "TAXMAIL" issued by Deneys Reitz Attorneys, article written by Ernie Lai King.

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