

## BACKGROUND BRIEFING TAX AMNESTY FOR SMALL BUSINESS

### Background on the introduction of a tax amnesty for small businesses

Small businesses play a vital role in stimulating economic activity, job creation, poverty alleviation and the general upliftment of living standards. Many small businesses operated informally, were historically marginalized and were excluded from the economic mainstream, thus remaining outside of the tax system. These small businesses are now keen to regularize their tax affairs but an obstacle is their past non-compliance and the resultant potential tax liabilities, penalties and interest.

Recently, the exchange control and tax amnesty catered for the regularization of the more sophisticated and affluent taxpayer. There has been criticism that no similar opportunity has been made available for small businesses.

SARS' tax-base broadening efforts and "walkabouts" in informal business areas have indicated that numerous small businesses are not on register and would like the opportunity for regularization without fear of tax liabilities arising out of past non-compliance. It should be noted that revenue collection is not the immediate goal of registering small businesses for tax purposes. Bringing people into the tax net is not always about immediate gains – it is also about future contributions and general improvement in the culture of compliance. This amnesty enables compliance and regularization. As businesses grow, they can see the benefits of moving into the formal economy. One part of this growth is about regularising their relationship with government, including SARS as a revenue administration. It will also enable small businesses who are partially compliant to eliminate any uncertainties that may exist in respect of taxation.

A phased approach to this amnesty is proposed. Phase one will involve the taxi industry whose access to the taxi recapitalisation program is dependent upon tax compliance. Phase two will involve expanding the amnesty to include other small businesses.

### Purpose and objectives of amnesty:

The proposed amnesty will allow SARS to waive taxes, penalties and interest potentially payable by small businesses for years of assessment ending on or before 31 March 2004.

Objectives –

- To facilitate participation in the taxi recapitalization program.
- To facilitate the normalisation of the tax affairs of small businesses.
- To better identify small business needs.
- To increase the tax base by registering more individuals and businesses.
- To increase and extend the tax compliance culture.

### Legislative process

Legislation to regulate the proposed amnesty will be proposed during the first half of 2006.

### Who qualifies for the proposed amnesty?

All persons (including: natural persons, trusts, companies and co-operatives) who operate one or more businesses, the turnover of which collectively does not exceed R5 million for the 2005 year of assessment, including:

- Persons unregistered for tax purposes at 31 March 2004.
- Those who are registered taxpayers and whose income from small business activities has not been declared or has been understated.

### Exclusions from participation in the proposed amnesty

- Income from salary and investment.
- Any person who is the subject of enforcement action and who has received a letter from SARS stating that the person is the subject of a tax audit / investigation. Such letter may be withdrawn by SARS at a later stage.
- Any person who has already submitted a return to the extent of the amount already disclosed.

### Refusal and revocation of amnesty

- Any person who fails to make full disclosure of all income received in respect of the 2005 year of assessment as well as a full disclosure of such persons' assets and liabilities as at the end of that year.

### What taxes are included for relief in terms of the proposed amnesty?

Income tax (including CGT) for years of assessment ending on or before 31 March 2004 to the extent that such business income has not been declared or has been under-declared, as well as certain other taxes affecting small businesses that will be specified in legislation.

### How will a person qualify for amnesty?

A person will have to apply in writing for the amnesty. A person who qualifies for the proposed amnesty will be required to pay a levy of 10% based on taxable income from small business operations for the 2005 year of assessment. No refunds will be made for taxes paid in respect of years of assessment for which amnesty has been granted.

### When can a qualifying person apply for the proposed amnesty?

As indicated in the Budget Review, the amnesty will take place in two phases.

- Phase one will focus on qualifying taxi operators and the amnesty window period for this will run from 1 August 2006 to 31 May 2007.
- Phase two will include other qualifying small businesses and will commence later in the year.

### Who will handle the applications for amnesty?

A separate unit within SARS, with regional presence, will be established to process all applications on a confidential basis.

## Benefits of the amnesty

The benefits of the proposed amnesty are –

- Waiver of the relevant taxes for years of assessment ending on or before 31 March 2004.
- Waiver of additional taxes, penalties and interest on these taxes.
- Waiver of criminal prosecution for tax offences.

## Consequences of non-participation

This amnesty represents a unique opportunity to enter the tax system and regularize one's tax affairs. Should this opportunity not be grasped, the following consequences should be noted –

- No taxes will be waived.
- Additional tax and interest will be payable.
- Enforcement actions will be conducted.
- Criminal prosecutions may arise.

## Objection and appeal

If any applicants are dissatisfied with any decision made by SARS in respect of this amnesty, they may lodge an objection with SARS and, if they are still dissatisfied, the matter may be appealed to the Tax Court.

## SARS reporting and accountability

Details of the relief provided to persons qualifying for the amnesty will be reported on an anonymous basis to the Minister of Finance.

## Further details

The above summary is an outline of more detailed proposals that will form part of legislation.