

**INTRODUCTION OF EXCHANGE CONTROL AMNESTY AND  
AMENDMENT OF TAXATION LAWS BILL, 15 MAY 2003  
BY THE HONOURABLE MINISTER OF FINANCE,  
TREVOR A MANUEL, MP**

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**Introduction**

Madam Speaker, it gives me great pleasure to introduce the Exchange Control Amnesty and Amendment of Taxation Laws Bill. The Bill has benefited immensely from the extensive deliberations by the Portfolio Committee on Finance. I would like to thank Ms Barbara Hogan for her leadership and for the valuable comments provided during the hearings process. It is heartening to realise that in terms of tax policy design, efforts by PCOF continue to add transparency to deliberations that have reached a level of maturity envied by many other jurisdictions. Government attaches great value to the contributions of the public, further enriching the Bill. Moreover, we firmly believe that this Bill sets the scene for an exciting period in which many South Africans are invited to:

- take this opportunity, amidst an unfavourable international economic climate, putting their trust into this economy and their funds;
- divulge their contravention of Exchange Control Regulations and certain tax acts, thereby regularising their affairs in respect of foreign-held assets;
- disclose foreign assets amidst Government's efforts to facilitate the repatriation thereof; and

- extend the tax base by disclosing previously unreported foreign assets.

## **RATIONALE OF THE EXCHANGE CONTROL AMNESTY BILL**

Despite the existence of exchange controls, many South African individuals and entities have a long history of shifting assets offshore illegally in a variety of ways. The foreign income from these assets typically goes unreported in terms of certain tax acts.

Government has rightly taken the position that contraventions of Exchange Control Regulations and tax should not be tolerated. However, in recent years, it has become apparent that many individuals and entities wish to repatriate their foreign held assets voluntarily and regularise their affairs due to greater international cooperation in tax compliance efforts and enhanced surveillance of international capital flows. Furthermore, the recent promulgation of the Financial Intelligence Centre Act has further increased the risk of holding illegal foreign assets.

Internationally, the legal and economic environment has also become less favourable for illegally held foreign assets. Since 1994, Government has greatly expanded its tax treaty network, thereby facilitating greater international information exchange. The world community is increasingly intolerant of tax haven countries and has reinforced measures to combat illegal money laundering. Finally, the current state of the world economy indicates that the growth prospects of foreign earnings are less attractive in comparison to earning opportunities of onshore investments.

## **PROCEDURES AND REQUIREMENTS OF PROPOSED AMNESTY**

The Exchange Control Amnesty Bill contains provisions that allow South African residents to disclose their foreign assets held in contravention of Exchange Control Regulations and certain Tax Acts. Disclosure will allow residents to exonerate and regularise their exchange control and income tax affairs at minimal cost. The amnesty procedures are as follows:

- (a) Any South African resident natural person (including the deceased estate of a person), a close corporation or trust may apply for amnesty relief.
- (b) Amnesty applicants may apply from 1 June 2003 through to 30 November 2003.
- (c) The Exchange Control Amnesty will only apply to individuals and entities that come voluntarily forward – those who are already under investigation by the authorities involving their foreign assets are precluded from the amnesty process.
- (d) The application must be filed in the form of an affidavit or solemn declaration and most importantly, the applicant must also affirm that the foreign assets disclosed do not stem from any unlawful activity, except exchange control and tax law violations or any associated misrepresentation or nondisclosure in respect of those violations.

Individuals or entities engaged in criminal activities such as drug smuggling, money laundering and terrorism do not fall within the amnesty.

## **EXCHANGE CONTROL RELIEF**

- (i) The Exchange Control amnesty will apply only to disclosed foreign assets while non-disclosed foreign assets remain fully subject to potential civil and criminal prosecution.
- (ii) Disclosure of a foreign asset requires a statement of that foreign asset's market value as of 28 February 2003 and full description of identifying characteristics.
- (iii) Amnesty for disclosed foreign assets attracts an amnesty levy of 5 per cent on the fair market value of the repatriated foreign assets. A 10 per cent levy will apply to the stated 28 February 2003 market value of non-repatriated foreign assets minus the R750 000 exchange control permissible foreign investment allowance.
- (iv) The amnesty levy must be paid from foreign assets within 3 months.

## **IN RESPECT OF TAX RELIEF FOR THE NON-DISCLOSURE OF FOREIGN EARNINGS, THE FOLLOWING PROCEDURE APPLIES:**

- (i) Individuals and closely held entities who failed to disclose foreign receipts and accruals arising in the taxable year ending on or before 28 February 2002 may separately apply for amnesty relief in this regard even if those applicants did not simultaneously violate the Exchange Control Regulations.
- (ii) The related tax amnesty relief for failure to disclose receipts and accruals of foreign assets will only be granted if there is full

disclosure of the receipts and accruals of that foreign asset arising after the 28 February 2002 cut-off date.

- (iii) Successful applicants are not liable for any Income Tax payment (or any associated criminal offence) with respect to disclosed foreign assets.

## **TAX RELIEF FOR THE NON-DISCLOSURE OF DOMESTIC FUNDS TRANSFERRED OFFSHORE**

- (i) This amnesty will also cover domestic tax transgressions (i.e., Income Tax, Donations Tax, the Secondary Tax on Companies, and Estate Duty), but only to the extent these domestic transgressions related to foreign assets.
- (ii) Applicants must disclose the amount and date of foreign assets shifted offshore. The price of the amnesty for a domestic tax violation comes at the price of a domestic amnesty levy of 2 per cent on undisclosed amounts.
- (iii) With a view to protecting tax morality in respect of compliant taxpayers the domestic tax amnesty will not cover other tax violations, such as the VAT, PAYE, Skills Levy, UIF and RSC Levy. These taxes have been excluded from the amnesty because violations of this kind typically involve serious fiduciary violations such as the wrongful use of PAYE from employee salaries.

## **ADVISORS AND FACILITATORS**

The amnesty does not generally apply to advisors and facilitators that merely assisted applicants in violating Exchange Control Regulations and related tax acts.

However, concerns were expressed during the hearings that advisors and facilitators need some level of protection. It was contended that advisors and facilitators may attempt to dissuade applicants from coming forward out of fear that an applicant's request for amnesty will lead to the prosecution of these advisors and facilitators. On the basis of further careful consideration by Government, the Bill was revised to provide coverage for advisors and facilitators by limiting the investigation powers of SARS and SARB. The amnesty unit, SARS and SARB therefore cannot force an amnesty applicant to disclose the identity of any party that assisted in a violation. In addition, the amnesty unit will erase all names of parties inadvertently revealed by the applicant on an application form.

With this level of protection, no reason exists to generally extend the amnesty for advisors and facilitators as no names will be requested and no names should be revealed. However, the only extension of the amnesty involves a limited class of facilitators, which are parties who physically assisted in the violation. These facilitators include individuals (such as trustees and employees), wholly owned companies and trusts that illegally held or accumulated foreign assets on the applicant's behalf. These related parties need an extra level of protection because SARS and SARB will automatically have

an investigation trail to these related parties once the applicant discloses the need for amnesty.

Such facilitators may apply for relief by adding their names to an applicant's application for amnesty. In other words, a facilitator may only come forward if the related applicant files an amnesty application.

## **INSTITUTIONAL IMPLICATIONS**

Madam Speaker, this Bill will require the establishment of an independent amnesty unit for processing the applications. An independent Chairperson will be appointed shortly and the unit will contain personnel from SARB and SARS. The unit will terminate after processing all successful applications and after all unsuccessful applicants have exhausted their appeals. The draft legislation also provides for the issuance of speedy guidance through regulations that address unintended consequences. The amnesty unit can only make successful applications available to SARS and SARB so that applicants receive their desired amnesty protection.

SARB and SARS must provide information about the amnesty to the Minister of Finance so that the Minister can fully report on the progress of the amnesty to Parliament. This information will ensure that the amnesty is conducted in a transparent and accountable way.

The Bill also contains a provision expediting and regulating the efficient exchange of information flows between SARB and SARS.

These measures will promote future enhanced enforcement of exchange control and taxation laws in terms of foreign assets, providing yet another reason for South Africans to grab the opportunities provided by this amnesty.

## **OTHER GENERAL AMENDMENTS TO TAXATION LAWS**

In addition, the Exchange Control Amnesty and Amendment of Taxation Laws Bill contains miscellaneous amendments to certain tax acts as announced in the 2003 Budget Review. These adjustments entail personal income tax rates, income brackets, and exemption thresholds. The Bill also removes certain duties. These amendments further impose a Secondary Tax on Companies when domestic companies shift their tax residence status offshore, thereby preventing artificial capital outflows.

Madam Speaker, I hereby table the Exchange Control Amnesty and Amendment of Taxation Laws Bill, 2003.