

The draft **Small Business Tax Amnesty and Amendment of Taxation Laws Bill, 2006**, will be released for public comment towards the middle of May. The provisions relating to the small business tax amnesty are set out below in order to provide additional time for public comment. These provisions may be modified for incorporation in the draft Small Business Tax Amnesty and Amendment of Taxation Laws Bill, 2006, following ongoing internal review and consideration of early comments received.

Comments on the draft legislation must be furnished by **31 May 2006** and it would be appreciated if they could be divided into policy and technical sections. Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

Comments must be submitted to:

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REPUBLIC OF SOUTH AFRICA

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**SMALL BUSINESS TAX AMNESTY  
AND AMENDMENT OF TAXATION  
LAWS BILL**

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*(As introduced in the National Assembly as a money Bill)*  
*(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B - 2006]

**GENERAL EXPLANATORY NOTE:**

[        ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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**BILL**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**CHAPTER I**  
**SMALL BUSINESS TAX AMNESTY**

***Part I***  
***Purpose and Objective of Tax Amnesty***

**Purpose and Objective**

1. The purpose and objective of the tax amnesty provided for in this Chapter is to—

- (a) broaden the tax base;
- (b) facilitate the normalization of the tax affairs of small businesses;
- (c) increase and improve the tax compliance culture; and
- (d) facilitate participation in the tax recapitalization program.

***Part II***  
***Interpretation, Application and Administration***

**Definitions**

2. For purposes of this Chapter, unless the context indicates otherwise, any meaning ascribed to a word or expression in the Income Tax Act, 1962, the Value-Added Tax Act, 1991, the Skills Development Levies Act, 1999, and the Unemployment Insurance Contributions Act, 2002, must bear the meaning so ascribed, and—

“2005 year of assessment” means the year of assessment ending during the 12 month period commencing 1 April 2004 and ending 31 March 2005;

“2006 year of assessment” means the year of assessment ending during the 12 month period commencing 1 April 2005 and ending 31 March 2006;

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“date of application” means the date on which the application for tax amnesty is submitted to the Commissioner as contemplated in section 6;

“deliver”, in relation to any notice or document, means—

- (a) handing that notice or document to the relevant person;
- (b) sending the notice or document to the relevant person by registered post to that person’s last known address, which may be his or her last known place of residence, office, place of business or postal address;
- (c) transmitting that notice or document to the relevant person by facsimile; or
- (d) transmitting that notice or document to the relevant person by electronic means:

Provided that in the case of paragraphs (c) and (d), the notice or document must be handed to the relevant person or sent by registered post to that person as contemplated in paragraph (b), within ten days of it being so transmitted by facsimile or electronic means;

“Income Tax Act”, means the Income Tax Act, 1962 (Act No. 58 of 1962);

“Minister”, means the Minister of Finance;

“qualifying period” in relation to tax amnesty in respect of—

- (a) any income tax, means any year of assessment preceding the 2005 year of assessment; or
- (b) any other tax, levy or contribution means any year of assessment, dividend cycle or tax period which ends before the commencement of the 2005 year of assessment;

“remuneration”, means remuneration as defined in the Fourth Schedule to the Income Tax Act, 1962;

“Skills Development Levies Act”, means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

“tax amnesty levy” means the levy contemplated in Part V of this Chapter;

“Unemployment Insurance Contributions Act”, means the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);

“unlisted company”, means any company as defined in section 1 of the Income Tax Act, but excludes a company referred to in paragraph (e) of that definition and any listed company as defined in that Act;

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“Value-Added Tax Act”, means the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

### **Administration of Chapter**

3. This Chapter is administered by the Commissioner.

### **Exercise of powers of Commissioner**

4. Any power granted to the Commissioner under this Chapter may be exercised by the Commissioner personally or by any person designated by the Commissioner for this purpose.

### **Application of Chapter**

5. A person may apply for tax amnesty under this Chapter, if—
- (a) that person is a natural person (including the deceased or insolvent estate of a natural person), or a trust or was an unlisted company during the qualifying period; and
  - (b) the total gross income of that person for the 2005 year of assessment derived from carrying on business did not exceed R5 million; and
  - (c) in the case of an unlisted company all the shares or members' interests of that company on the last day of the 2005 year of assessment were held directly by individuals (including the deceased or insolvent estate of any individual).

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### *Part III*

#### *Application for tax amnesty*

##### **Application for tax amnesty and period for application**

6. A person (hereinafter referred to as “the applicant”) applying for tax amnesty in terms of this Chapter must submit an application to the Commissioner—

- (a) during the period commencing 1 August 2006 and ending 31 May 2007; and
- (b) at the address and in the form and manner as may be prescribed by the Commissioner.

##### **Information required in application**

7. (1) The applicant must, in the application for tax amnesty, disclose—

- (a) the taxable income in respect of all amounts received by or accrued or deemed to have been received by or accrued to that applicant during the 2005 year of assessment, which were not declared to the Commissioner before 15 February 2006, as required by the Income Tax Act;
- (b) any employee’s tax which that applicant, as an employer, failed to deduct or withhold from any remuneration paid or payable during the 2005 year of assessment to any employees, and all amounts so deducted or withheld which that applicant failed to declare to the Commissioner as required by the Income Tax Act;
- (c) any value-added tax in respect of any taxable supply of goods or services or the importation of any goods or the supply of imported services which that applicant failed to declare to the Commissioner as required by the Value-Added Tax Act, for tax periods ending during the 2005 year of assessment;



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- (d) any withholding tax on royalties in respect of any amount paid during the 2005 year of assessment to a person who is not a resident which that applicant failed to declare to the Commissioner as required by the Income Tax Act;
- (e) any secondary tax on companies in respect of dividends declared (or deemed to be declared for purposes of Section 64B of the Income Tax Act) during the 2005 year of assessment which that applicant failed to declare as required by that Act;
- (f) any unemployment insurance contributions in respect of remuneration as defined in the Unemployment Insurance Contributions Act paid or payable during the 2005 year of assessment which that applicant, as an employer, failed to declare to the Commissioner as required by that Act;
- (g) any skills development levies in respect of any leviable amount, as defined in section 3(4) of the Skills Development Levies Act, paid or payable during the 2005 year of assessment which the applicant, as an employer, failed to declare to the Commissioner as required by that Act;

(2) The applicant must together with the application for tax amnesty furnish returns in respect of each of the taxes, levies or contributions disclosed in terms of subsection (1) for the 2005 year of assessment or tax periods ending or payments made during that year, as the case may be, together with a statement of all assets at cost and liabilities of the applicant as at the end of that year.

(3) If it is not possible for the applicant to provide full particulars of the actual amounts contemplated in subsection (1), or of the amounts declared in any return or statement furnished in terms of subsection (2), the applicant may provide reasonable estimates of those amounts and must disclose to the Commissioner that the amounts provided are estimates.

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### ***Part IV***

#### ***Evaluation and approval of application***

##### **Evaluation of application and approval**

8. (1) The Commissioner must, subject to subsection (2), approve an application for tax amnesty in respect of an applicant, only if that applicant complies with all the provisions of sections 5, 6 and 7;

(2) The Commissioner may not approve an application in terms of subsection (1) if the Commissioner, at any time before the submission of the application, delivered a notice to that applicant or that applicant's representative informing that applicant of an audit, investigation or other enforcement action relating to any failure by that applicant to comply with any Act in respect of which the amnesty application relates, unless that notice was withdrawn by the Commissioner before submission of the application;

(3) The Commissioner must deliver to the applicant a notice of his or her decision to approve or deny the application for amnesty and must set out the reasons for that decision.

### ***Part V***

#### ***Payment of Tax Amnesty Levy***

##### **Imposition of tax amnesty levy**

9. (1) A person with approval in terms of section 8 is subject to a tax amnesty levy which is paid for the benefit of the National Revenue Fund.

(2) The tax amnesty levy is equal to 10 per cent of the taxable income determined for the 2005 year of assessment, to the extent that the amount of the taxable income was not declared to the Commissioner prior to 15 February 2006.

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(3) In determining the amount of the tax amnesty levy in terms of subsection (2), no regard must be had to the balance of any assessed loss or assessed capital loss carried forward from any preceding year of assessment.

### **Payment of tax amnesty levy**

**10.** The tax amnesty levy must be paid to the Commissioner within a period of twelve months after the date on which the notice of approval was delivered to the person in terms of section 8(3), or such longer period as the Commissioner may allow, subject to such conditions as the Commissioner may impose.

## ***Part VI***

### ***Relief in terms of Tax Amnesty***

#### **Relief from payment of tax, contribution or levies**

**11.** Subject to section 14, an applicant with approval under this Chapter is not liable for the payment of—

- (a) any income tax under the Income Tax Act, in respect of any amount received by or accrued or deemed to have been received or accrued to the applicant during the qualifying period, from the carrying on of any business, which was not declared to the Commissioner prior to 15 February 2006 as required by that Act;
- (b) any employees' tax which the applicant failed to deduct or withhold from any remuneration paid to employees during the qualifying period, or which was deducted or withheld during that period but which the applicant failed to pay over to the Commissioner as required by the Income Tax Act;
- (c) any value-added tax in respect of any taxable supply of goods or services or the importation of any goods or the supply of imported services during the qualifying period which the applicant failed to declare to the Commissioner as required by the Value-Added Tax Act;

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- (d) any withholding tax on royalties payable in terms of the Income Tax Act, in respect of any amount paid during the qualifying period to any person who is not a resident, which the applicant failed to declare under that Act;
- (e) any secondary tax on companies payable in terms of the Income Tax Act, in respect of any dividend declared or deemed in terms of section 64B of that Act to be declared during the qualified period, which the applicant failed to declare to the Commissioner as required by that Act;
- (f) any unemployment insurance contributions in respect of any amounts paid during the qualifying period which the applicant as employer failed to declare to the Commissioner as required by the Unemployment Insurance Contributions Act; and
- (g) any skills development levies in respect of any amounts paid during the qualifying period which the applicant as employer failed to declare to the Commissioner as required by the Skills Development Levies Act.

### **Relief from payment of additional tax, penalties and interest**

12. An applicant with approval under this Chapter is not liable for the payment of any additional tax, penalty or interest to the extent that it relates to any amount contemplated in section 11 in respect of which tax amnesty has been granted.

### **No prosecution for related offences**

13. An applicant with approval under this Chapter is deemed not to have committed any offence in terms of any Act to which this Chapter relates, in respect of any non-disclosure by that applicant of any amount, to the extent that amnesty has been granted in respect of that non-disclosure.

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### **Circumstances where tax amnesty relief does not apply**

**14.** The tax amnesty relief does not apply in respect of any amount of tax, levy, contribution, interest, penalty or additional tax, to the extent that it—

- (a) had already been paid before the date of application; or
- (b) is payable or becomes payable in consequence of any return, declaration or information which was furnished to the Commissioner by the applicant or representative of the applicant before the date of application.

### **Disallowance of deductions, allowances and losses**

**15.** An applicant with approval under this Chapter may not—

- (a) claim any deduction, allowance, assessed loss or assessed capital loss arising during the qualifying period for purposes of determining that applicant's liability for income tax thereafter;
- (b) for purposes of calculating that person's liability for secondary tax on companies, set off any excess of dividends which accrued to the applicant during any dividend cycle ending during the qualifying period against any dividends declared by the applicant during any dividend cycle ending thereafter; or
- (c) claim the deduction of any input tax as defined in section 1 of the Value-Added Tax Act, or any other deduction contemplated in section 16(3) of that Act, which was incurred by the applicant during any tax period ending during the qualifying period for purposes of calculating that persons liability for value-added tax thereafter;

### **Circumstances where approval is void**

**16.** Any approval granted by the Commissioner is void if—

- (a) the applicant fails to pay the full amount of the tax amnesty levy within the period prescribed in Part V;

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- (b) the applicant failed to make full disclosure of all amounts as contemplated in section 7(1) or furnish any return or statement as contemplated in section 7(2);
- (c) any estimate made by the applicant in terms of section 7(3) is materially incorrect; or
- (d) the applicant failed to provide all information required by the Commissioner to enable him or her to properly evaluate the application for amnesty.

### ***Part VII***

#### ***Review of decision of Commissioner***

#### **Objection against decision of Commissioner**

17. (1) Any person aggrieved by a decision of the Commissioner under this Chapter to deny approval may object and appeal against that decision.

(2) The provisions of Part III of Chapter III of the Income Tax Act, and the rules relating thereto, apply *mutatis mutandis* to any objection noted and appeal lodged against a decision of the Commissioner under this Chapter.

(3) The tax court contemplated in section 83 of the Income Tax Act has jurisdiction to hear any appeal noted against any decision of the Commissioner under this Chapter.

### ***Part VIII***

#### ***Reporting***

#### **Reporting**

18. (1) The Commissioner must provide to the Minister and the Auditor-General information of all applications for tax amnesty under this Chapter and must disclose—

- (a) the number of applications received and the number of applications approved and denied;

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- (b) the number of new taxpayers registered with the Commissioner per tax type;
  - (c) details per tax type of the amounts of tax declared by applicants under the tax amnesty which were not previously disclosed to the Commissioner
  - (d) details per tax type of the amounts of all taxes payable for the 2006 year of assessment by applicants who obtained approval as contemplated in this Chapter;
  - (e) the total amount of all tax amnesty levies payable in terms of Part V by all applicants.
- (2) The list contemplated in subsection (1) must—
- (a) be in a form that does not disclose the identity of any applicant; and
  - (b) be submitted at such times as may be agreed between the Commissioner and the Minister or Auditor-General, as the case may be.
- (3) The Minister must report to Parliament on the information contemplated in subsection (1).

## **CHAPTER II GENERAL AMENDMENTS TO TAXATION LAWS**

*(Separate batch of legislation to follow)*

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REPUBLIC OF SOUTH AFRICA

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*EXPLANATORY MEMORANDUM*

ON THE

**SMALL BUSINESS TAX AMNESTY AND AMENDMENT  
OF TAXATION LAWS BILL, 2006**

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[W.P. 1 —'06]



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### EXPLANATORY MEMORANDUM ON THE SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS BILL, 2006

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#### CHAPTER I

#### CLAUSES 1 TO 18

#### SMALL BUSINESS TAX AMNESTY

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

SARS' tax-base broadening efforts and "walkabouts" in informal business areas have indicated that numerous small businesses are not on register or have not made full disclosure to SARS and would like the opportunity for regularisation without fear of tax liabilities arising out of past non-compliance. This also includes taxi operators who want to participate in the taxi recapitalisation program.

The Minister of Finance, therefore, announced in the 2006 Budget that Government will introduce a tax amnesty for small business.

The purpose and objective of the tax amnesty is, therefore, to:

- broaden the tax base;
- facilitate the normalisation of the tax affairs of small businesses;
- increase and improve the tax compliance culture; and
- facilitate participation in the taxi recapitalisation program.

#### *Persons who may apply for amnesty*

Any individual, private company, close corporation, trust, unlisted public company, co-operative, insolvent estate or deceased estate which meets certain requirements may apply for amnesty. The requirements are that—

- the individual or entity must carry on a business;
- the gross income (turnover) of the business during the 2005 tax year was not more than R5 million; and
- in the case of a company or close corporation all the shares or members' interests were held directly by individuals on the last day of the 2005 tax year.

For purposes of the amnesty, the "2005 year of assessment" is defined as the year of assessment which ended during the period of 12 months from 1 April 2004 to 31 March 2005.

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Small businesses which are unregistered for tax purposes at the end of the 2005 tax year or which are registered taxpayers but whose income from small business activities has not been declared or has been understated, will benefit from the amnesty.

### *Method of application*

An applicant must apply for amnesty with SARS on a form and at addresses to be prescribed by SARS. Applications forms should be submitted at any time during the period 1 August 2006 to 31 May 2007.

### *Information to be submitted*

The application must contain details of the following amounts:

- the taxable income for the 2005 tax year in respect of all receipts and accruals which were not declared to the Commissioner before 15 February 2006;
- the employees' tax (PAYE) for the 2005 tax year which the applicant failed to deduct or withhold from remuneration paid to employees or which was deducted or withheld but not paid over to the Commissioner;
- the value-added tax in respect of any taxable supply of goods or services or the importation of any goods or the supply of imported services which the applicant failed to declare to the Commissioner for tax periods ending during the 2005 tax year;
- the withholding tax on royalties in respect of an amount paid to any non-resident which was not declared to the Commissioner for the 2005 tax year;
- the secondary tax on companies which the applicant failed to declare in respect of dividends declared or deemed to be declared during the 2005 tax year;
- the unemployment insurance contributions which the applicant as employer failed to declare to the Commissioner for the 2005 tax year; and
- the skills development levies which the applicant as employer failed to declare to the Commissioner for the 2005 tax year.

The applicant must with the application for tax amnesty also submit—

- all relevant returns as required for each of the taxes, levies and contributions mentioned above for which amnesty is being applied, in respect of the 2005 year of assessment or tax periods ending or payments made during that year of assessment; and
- a statement of all assets at cost and liabilities of the applicant as at the end of the 2005 tax year.

If it is not possible for the applicant to provide full particulars of any amounts declared in a return, the applicant may provide a reasonable estimate of those amounts.

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### *Amnesty Levy*

An amnesty levy of 10% of the taxable income determined for the 2005 year of assessment relating to amounts which were not declared to SARS before 15 February 2006, is payable by the applicant. In determining the amount of the levy, any balance of assessed loss or assessed capital loss brought forward from a previous year losses brought forward from a previous year must be ignored.

### *Other conditions to qualify for amnesty*

Tax amnesty will only apply if —

- the applicant pays the full amount of the tax amnesty levy within 12 months from the date of approval or a longer period as the Commissioner may allow;
- the applicant made full disclosure in all the tax returns for the 2005 tax year;
- the estimates made by the applicant are not materially incorrect; and
- the applicant provides all information required to enable the Commissioner to properly evaluate whether the applicant qualifies for amnesty.

### *Evaluation process*

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

### *Scope of the tax amnesty relief*

If an application for tax amnesty is successful, the applicant is granted relief from the payment of—

- income tax in respect of any amounts received or accrued or deemed to have been received or accrued by the small business in all tax years before the 2005 tax year;
- employees' tax which the applicant did not deduct or withhold, or which the applicant deducted or withheld but did not pay over to SARS in any year before the 2005 tax year;
- value-added tax in respect of the taxable supply goods or services or the importation of any goods or the supply of imported services during any tax period ending before the 2005 tax year;
- withholding tax on royalties in respect of any amount paid to a non-resident before the 2005 tax year;
- secondary tax on companies in respect of any dividend declared or deemed to be declared before the 2005 tax year;
- unemployment insurance contributions which the applicant did not declare during any tax year before the 2005 tax year; and
- skills development levies which the applicant did not declare during any tax year before the 2005 tax year.

The relief also covers additional taxes, interest and penalties which relate to the undisclosed amounts.

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A successful applicant will not be subjected to any criminal prosecution relating to the non-disclosure of amounts for which amnesty is granted, which non-disclosure would otherwise have constituted an offence.

### *Exclusion from the tax amnesty relief*

The tax amnesty does not apply in respect of any tax, levy, contribution, interest, penalty or additional tax which had already been paid by the applicant before the date of the application or which becomes payable as a result of any return, declaration or information submitted to SARS before the date of the application.

Any approval granted by the Commissioner is void if —

- the applicant fails to pay the full amount of the tax amnesty levy within the period allowed for payment;
- the applicant failed to make full disclosure in any tax return for the 2005 year of assessment;
- the estimate made by the applicant is materially incorrect; or
- the applicant failed to provide all information required to enable the Commissioner to properly evaluate whether the applicant qualifies for amnesty.

### *Review of Commissioner's decision*

An applicant whose application for tax amnesty is denied by the Commissioner may object and appeal against that decision in terms of the normal dispute resolution procedures allowed in the Income Tax Act.

### *Treatment of deductions and losses going forward*

If tax amnesty is granted in respect of a person, that person may not in any future year of assessment—

- claim any deduction, allowance, assessed loss or assessed capital loss arising during the qualifying period for purposes of determining the applicant's liability for normal tax thereafter;
- for purposes of calculating that person's liability for secondary tax on companies, set off the excess of any dividends which accrued in the qualifying period against any dividends declared by the applicant in any dividend cycle ending thereafter;
- claim the deduction of any input tax incurred or any other deduction as contemplated in the Value-Added Tax Act by that person during tax periods ending during the period in respect of which the tax amnesty applies for purposes of calculating that persons liability for value-added tax thereafter.

### *Reporting by the Commissioner and Minister*

The Commissioner must provide the following information relating to the tax amnesty process to the Minister and the Auditor-General—

- the number of applications received and the number of applications approved and rejected;

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- the number of new taxpayers registered (per tax type) as a result of the amnesty;
- details per tax type of the amounts declared under the tax amnesty which were not previously disclosed to the Commissioner;
- details per tax type of the amounts of all taxes payable for the 2006 year of assessment by applicants who obtained tax amnesty approval; and
- the total amount of all levies payable by all applicants.

This information must be provided in a form which does not disclose the identity of any applicant. The information must be submitted at a time as agreed between the Commissioner and the Minister and Auditor-General. The Minister must report to Parliament on the above information.