

Deneys Reitz Inc.
Reg. No. 1984/003385/21
82 Maude Street
Sandton 2196
PO Box 784903
Sandton 2146
South Africa

Tel +27 11 685 8500
Direct tel +27 11 685 8924
Fax +27 11 883 4000
Direct fax +27 11 722 9186
Docex 215 Johannesburg
elk@deneystreitz.co.za
www.deneystreitz.co.za
See www.africalegal.co.za

Your Ref

Our Ref

ELK/als

A Hermans
Committee Secretary :
Parliamentary Committee on Finance
P O Box 15
Cape Town
8000

1 June 2006

Dear Committee Secretary

COMMENTS ON THE DRAFT BILL: SMALL BUSINESS TAX AMNESTY

We set out below our comments on the draft bill.

1. The Minister's Budget Speech, on 15 February 2006, referred to the Small Business Tax Amnesty as taking place over two phases. The first phase, to take effect between August 2006 and May 2007, will focus on the taxi industry, and a second phase later in the year will apply to other small businesses. Confirmation is required that the amnesty set out in the draft bill will be available to all businesses from day 1 and not just the taxi industry. In other words there will not be a second phase.
2. The definition in section 1 of "2006 year of assessment" appears to be superfluous as there appears no direct reference in the draft legislation to this term.
3. The amnesty applies to certain persons being natural persons, trusts or unlisted companies, all the shares of which or members' interests are held directly by individuals, on the last day of the 2005 year of assessment. A further requirement is that the total gross income of such persons, for the 2005 year of assessment, must not exceed R5 million.
4. We firstly recommend that the concept of a small business should be consistent with the income tax recognition of a small business, ie a business

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where the annual gross income does not exceed R14 million. Secondly, if the business has a financial year of less or more than 12 months there should be a pro-rating of the R14 million. Thirdly, in the case of unlisted companies, the qualifying criteria should be that all the shares or members' interests are held directly or indirectly by individuals or trusts. This recommendation is to cater for businesses run through a chain of companies where the ultimate owners of the shares in the top holding company are individuals and furthermore, as the amnesty is extended to trusts, there appears no reason why companies whose shares or members' interests are held by trusts should not also be able to apply for amnesty.

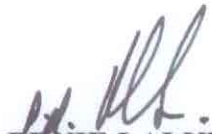
5. The word "*were*" in the third line of section 7(1)(a) should be replaced with "*was*".
6. We recommend that the amnesty be extended to include estate duty, donations tax and customs and excise contraventions.
7. Section 7(2) requires the submission of a statement of all assets and liabilities of the applicant as at the end of the "*2005 year of assessment*". If the request is to set a base for a future comparative analysis of the applicant's financial position, we have no further comment. However, if the request is to facilitate an audit of the applicant's tax disclosures in an application, we refer to point 20 below on verification procedures and audit.
8. Section 7(3) records that "*reasonable*" estimates will be accepted. The term "*reasonable*" is very subjective and some guidelines are recommended as to what SARS will regard as "*reasonable*".
9. Section 8(1) provides that "*the Commissioner must...approve an application for tax amnesty...*" if the applicant complies with the provisions of sections 5, 6 and 7. Does the use of the word "*must*" mean that the information will be accepted at face value without any audit? If so, we believe that this amnesty offer will be acceptable to errant taxpayers and we refer you to point 20 below.
10. Section 8(2) refers to "*other enforcement action*". We recommend that the term "*other enforcement action*" be clarified, as it is possible for taxpayers to receive standard type questionnaires which are not necessarily indicative of an investigation.
11. Section 8(3) – we recommend that this sub-section be reworded to provide that the Commissioner is only required to provide reasons where an application for amnesty is denied. The current wording appears to require the Commissioner to also provide reasons for his decision to approve amnesty. This is obviously not the intention.

12. Section 9(2) provides for a tax amnesty levy of 10% of the taxable income determined for the "2005 year of assessment". What is the position where the applicant has a taxable loss for the 2005 year of assessment? Can amnesty still be applied for, and if so, will the tax amnesty levy be nil, ie 10% of nil taxable income?
13. Furthermore what if the potential applicant did not trade in the "2005 year of assessment" but traded in the prior years and was guilty of not fully complying with the various tax laws? Can that person still apply for amnesty and how will the amnesty levy be determined?
14. We recommend in the cases set out in points 12 and 13 that amnesty be afforded and the levy be based on the last year of trading, where taxable income was earned.
15. Section 10 provides that the amnesty levy must be paid within a period of twelve months after the date on which the notice of approval was delivered to the applicant. We recommend that a firm date be set for payment and any payment after that date, be approved by the Commissioner, which period of postponement will not exceed twelve months and for interest to be charged on any outstanding balance until full payment is made.
16. Section 11 provides for relief from the payment of certain taxes during the "qualifying period". We submit that the definition of "qualifying period", which is any year of assessment preceding the "2005 year of assessment" or tax period which ends before the commencement of the "2005 year of assessment", will prove problematic. Amnesty will be provided in respect of the "qualifying period", which, if the taxpayer's financial and tax year end is 30 April 2004, will be the tax year 1 May 2002 – 30 April 2003.
17. It appears that the monthly obligations on employees' tax, VAT, UIF contributions and Skills Development Levies for the period 1 May 2003 to the current date, will not be amnestied, which raises the spectre of interest and penalties, which may prove substantial and for a small business, a fatal blow to its cashflow. We recommend that the "qualifying period" be up to and include 15 February 2006, ie, the date of the Budget Speech. Failure to consider this amendment could prove a powerful disincentive to errant taxpayers to regularise their affairs in terms of the proposed amnesty. Of course, the determination of the amnesty levy may have to be amended accordingly.
18. Section 11(f) refers to "any amounts paid" and should be replaced with the term "remuneration" to be consistent with section 7(f). Furthermore, we recommend that the phrase "to the Commissioner" in section 7(f)'s reference to "failed to declare to the Commissioner as required by that Act", be deleted. A corresponding legislative amendment in the UIF Act will be

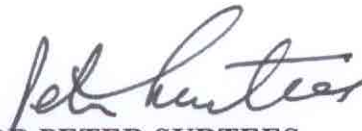
required to recognise the amnesty proposals as set out in the draft bill.

19. Clause 16(c) refers to any estimate which is “*materially*” incorrect. It is not clear what will be regarded as “material” and it is recommended that a percentage accuracy be stipulated.
20. Clarification is required as to what approval processes the applications will be subjected to. It is not recommended that the applicants be subjected to a full audit of all their affairs. It is not clear what is involved in the approval process, but we recommend that the applications be accepted at face value and not to subject applicants to an audit unless there are extraordinary circumstances, which should be specified and clearly set out. Any undue audit process that applicants are subjected to, will prove a disincentive for applicants to come forward. It should be accepted that the amnesty is exactly what it is, and unless there are glaring exceptional circumstances, the applications should be accepted at face value. In the result, there should be clarification of what audit process, if any, an applicant will be subjected to.

Yours faithfully



EKNIE LAI KING
DENEYS REITZ:
HEAD OF TAX SERVICES



PROFESSOR PETER SURTEES
DENEYS REITZ:
CAPE TOWN