

No. R. 1354

19 November 2004

**SECOND REPORTING EXEMPTION IN TERMS OF THE FINANCIAL  
INTELLIGENCE CENTRE ACT, 2001**

By virtue of the powers vested in me by section 74 of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001, "the Act"), I, Trevor Andrew Manuel, Minister of Finance, hereby make the exemption set out in the Schedule hereto, with immediate effect.

DATED AT PRETORIA THIS 01ST DAY OF NOVEMBER 2004.

  
TA MANUEL, MP

MINISTER OF FINANCE

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## **SCHEDULE**

Every person who carries on a business or is in charge of or manages a business or who is employed by a business and in that capacity assists or advises a client in connection with funds, or receives funds, in respect of which an application for amnesty in terms of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. 12 of 2003) is yet to be approved, is exempt from compliance with the provisions of section 29 of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001, "the Act"), in respect of making a report under that section of the Act concerning such funds disclosed in such application for amnesty, and involved in a transaction which such a person would have reported for no other reason than that the transaction concerns such funds, had it not been for this exemption.

**EXPLANATORY MEMORANDUM ON THE SECOND REPORTING  
EXEMPTION IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT,  
2001: THE USE OF FUNDS DISCLOSED IN AN AMNESTY APPLICATION  
PRIOR TO A DETERMINATION OF THE AMNESTY APPLICATION**

1. The exemption from the obligations of section 29 of the Act is aimed at facilitating the role of financial institutions, financial advisors and intermediaries in further assisting persons, who have applied for amnesty under the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Amnesty Act), while the determination of the amnesty application is pending.
2. The exemption will apply to financial institutions, financial advisors and intermediaries, as well as any other person who carries on a business or is in charge of or manages a business or who is employed by a business, by operation of law and will not have to be applied for. The exemption is limited and applies only in respect of funds disclosed in amnesty applications under the Amnesty Act (amnesty related funds).
3. The exemption will exempt persons to whom it applies from the duty under section 29 of the Financial Intelligence Centre Act, 2001 (the FIC Act) to report suspicious and unusual transactions to the Financial Intelligence Centre specifically in respect of the reinvestment or other usage of funds which are the subject of a pending amnesty application under the Amnesty Act.
4. The proposed exemption cannot absolve any person from liability for their own involvement in contraventions of the Exchange Control Regulations

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or Tax Evasion or any other criminal activity associated therewith, since that liability does not arise from the provisions of the FIC Act.

5. The full force of the law also remains applicable to any undisclosed funds that should have been disclosed under the amnesty process. Accordingly, where an applicant sought and received amnesty advice, but failed to file an amnesty application, or where an applicant did not seek amnesty advice and did not file an amnesty application, financial advisors and intermediaries must report any proposed transactions concerning such funds to the Centre under section 29 of the FIC Act.
  6. In all other matters unrelated to the amnesty, the financial institution, financial advisor or intermediary concerned remains obliged to file reports concerning financial transactions of a suspicious or unusual nature with the Centre under section 29 of the FIC Act.
  7. In conclusion, financial institutions, financial advisors and intermediaries are cautioned to ascertain at all times that funds under their control/ administration are subject to a pending amnesty application before proceeding with a new transaction relating to such funds.
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