

PRESIDENT'S OFFICE

No. 1047.
19 July 1995

NO. 19 OF 1995: TAX AMNESTY ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

To provide for an amnesty in respect of certain taxes and duties; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 10 July 1995.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. (1) For the purposes of this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962 (Act No. 58 of 1962), the Stamp Duties Act, 1968 (Act No. 77 of 1968), the Sales Tax Act, 1978 (Act No. 103 of 1978), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), or any law of a former state or territory imposing a tax or duty similar to the tax or duty imposed by any of the said Acts, bears (having regard to the context within which such word or expression is used) the meaning so assigned, and-

- (i) "amnesty" means the relief contemplated in section 3; (i)
- (ii) "amnesty period" means the period from the date of promulgation of this Act until 31 October 1995 or such later date as the Minister of Finance may, before that date, fix by notice in the Gazette; (ii)
- (iii) "Commissioner" means the Commissioner for Inland Revenue or any officer who performed or performs similar functions in a former state or territory; (iii)
- (iv) "former state or territory" means the former Republics of Transkei, Bophuthatswana, Venda and Ciskei and any territory declared under section 26 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), to be a self-governing territory; (vii)
- (v) "qualifying person" means any person who on 26 April 1994-
 - (a) was not registered with the Commissioner for purposes of employees tax, normal tax and value-added tax, and had not on or before that date applied to the Commissioner to be registered in respect of such taxes; or
 - (b) was so registered, but, in respect of whom the Commissioner, by reason of the fact that such person's whereabouts were unknown to the Commissioner on that date, was unable to enforce the provisions of any law imposing such taxes; (v)
- (vi) "qualifying tax" means normal tax, employees tax, non-resident shareholders tax, secondary tax on companies, value-added tax, donations tax or stamp duty; (iv)
- (vii) "Sales Tax Acts" means the Sales Tax Act, 1978 (Act No. 103 of 1978), read with section 85(2) of the Value-Added Tax Act, 1991 (Act

No. 89 of 1991), and any law of a former state or territory in terms of which a sales tax is leviable. (vi)

(2) Any reference in this Act to a tax or duty contemplated in the definition of "qualifying tax" in subsection (1) shall be construed as including a reference to any similar tax or duty imposed by a law of a former state or territory.

Application for amnesty

2. (1) Any qualifying person may within the amnesty period apply for amnesty in terms of this Act.

(2) An application for amnesty shall be made in writing to the Commissioner and shall be accompanied by an undertaking by the qualifying person concerned that such person will comply with such provisions of any law as relate to such person's liability for-

(a) normal tax in respect of the last year of assessment ending before 1 March 1995; and

(b) any other qualifying tax which became payable by such person before the date of such person's application for amnesty, other than any tax or duty contemplated in section 3(a).

(3) Any qualifying person who after 27 April 1994, but before the commencement of the amnesty period furnished the Commissioner with full information relating to such person's liability for the taxes contemplated in subsection (2), shall be deemed to have applied for amnesty in terms of this Act.

Scope of amnesty

3. Subject to the provisions of section 4, any qualifying person who has made an application under section 2 shall-

(a) not be liable for the payment of-

(i) any normal tax due in respect of any year of assessment ending before 1 March 1994;

(ii) any value-added tax in respect of the supply of goods or services or imported services or on the importation of goods before 1 March 1994;

(iii) any employees tax which such person was required to deduct or withhold from remuneration paid by such person or which such person became liable to pay, before 1 March 1995, whether or not such employees tax was in fact deducted or withheld by such person;

(iv) any stamp duty in respect of the execution of any instrument before 1 March 1994 or the registration of transfer of any marketable security, before that date;

(v) any non-resident shareholders tax in respect of any dividend declared before 1 March 1994;

(vi) any secondary tax on companies in respect of any dividend declared before 1 March 1994;

(vii) any donations tax in respect of any property disposed of by such qualifying person under a donation which took effect before 1 March 1994; and

(viii) any sales tax;

- (b) not be liable for the payment of any interest due in respect of the late payment of any qualifying tax referred to in section 2, in so far as such interest is due in respect of a period ending not later than the last day of the amnesty period;
- (c) not be liable for any penalties or additional tax in respect of the non-payment or late payment of any tax or duty referred to in paragraph (a) or (b); and
- (d) not be subject to criminal prosecution for offences committed in relation to any tax or duty referred to in paragraph (a) or (b).

Non-qualifying taxes

4. The amnesty shall not apply to any tax, duty, interest or penalty-
- (a) which was paid by the qualifying person; or
 - (b) which is payable or becomes payable in consequence of any return or information furnished by the qualifying person or any representative of such person to the Commissioner before 27 April 1994, or in consequence of an investigation into the affairs of the qualifying person commenced by the Commissioner before that date and of which the qualifying person or any representative of such person was aware.

Provisions relating to sales tax

5. (1) Where any person (whether a qualifying person or not)-
- (a) is held liable by the Commissioner to pay an amount of sales tax and pays such amount during the amnesty period or within six months thereafter; or
 - (b) is dissatisfied with the calculation of any amount of sales tax which such person is held liable by the Commissioner to pay and such person makes application within the amnesty period for the matter to be re-examined and thereafter during, or within nine months after, the amnesty period, pays such sales tax as is finally determined by the Commissioner as a result of such re-examination, no penalty shall, notwithstanding the provisions of the Sales Tax Acts, be payable in terms of the provisions of such Sales Tax Acts: Provided that where such amount has not been paid in full within the time allowed in terms of paragraph (a) or (b), as the case may be, such penalty shall be payable in respect of the amount which has not been paid.
- (2) Where the Commissioner is satisfied that any person is unable for any reason to furnish accurate information in respect of any matter relating to the determination of the liability for the payment of any sales tax by such person, the Commissioner may for the purpose of bringing such matter to finality agree with such person as to the amount of sales tax payable and, notwithstanding anything to the contrary in the Sales Tax Acts, raise an assessment on such person giving effect to such agreement, which assessment shall not be subject to objection and appeal.
- (3) If the amount of sales tax so agreed upon is paid within nine months after the date of such assessment, no penalty shall be payable: Provided that where such amount has not been paid in full within the time allowed, any penalty in terms of the provisions of the Sales Tax Acts shall be payable in respect of the amount which has not been paid.

Withdrawal of amnesty

6. An amnesty granted to any qualifying person shall be withdrawn-

- (a) if such person wilfully makes any default in complying with the undertaking referred to in section 2(2); or
- (b) if, without reasonable grounds, such person fails to pay any tax or duty contemplated in section 2 which is due by such person-
 - (i) within a period of one year after the end of the amnesty period; or
 - (ii) where such person has agreed to pay such tax or duty within a shorter period, within such shorter period.

Short title

7. This Act shall be called the Tax Amnesty Act, 1995.