


**Small Business Tax Amnesty & Amendment of Taxation Laws Bills**

Formal Deliberations  
14 June 2006



**Major Themes (Revisited)**


Basic Themes

- Rate and Threshold Relief
- Small Business Amnesty
- Municipalities
- Customs & Excise
- Miscellaneous Amendments & Technical Corrections


Revisions

- Small Business Amnesty
- Municipalities
- Miscellaneous Amendments & Technical Corrections

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**Small Business Amnesty . . .**



**Who May Apply (Clause 2)**

- Types of parties
  - Individuals (i.e. natural persons)
  - Trusts and estates
  - Unlisted companies (completely owned by individuals and/or estates)
- Activity level:
  - The party must carry on business
  - R10 million gross business turnover limit for the 2006 assessment year
  - Pro rate R10 million for years that are shorter or longer than 12 months


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**Core Requirements**

- Time Period:
  - Starting 1 August 2006
  - Ending 31 May 2007
- 2006 Assessment Year Information
- 5% Maximum Levy
- SARS Notice


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**Information Requirement (Clause 4)**


- One: Full disclosure of all business taxable income for the 2006 assessment year:
  - Only for a single year (no 2005 income Tax assessment year requirements)
  - No PAYE, Unemployment Insurance, Skills Development Levy, VAT or Royalty Withholding
- Two: Income Tax return for the 2006 assessment year
- Three: An asset/liability balance sheet at cost for the close of the 2006 assessment year

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 **Reasonable Estimates  
(Clause 4)**


- The amnesty retains:
  - the "reasonable estimate" concept in lieu of actual disclosure
  - The voiding of these reasonable estimates if not materially correct
- Moving the year forward to 2006 should reduce the need for reasonable estimates as well as the reasonable estimate procedure

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 **Levy Requirement  
(Clause 6)**


- Maximum 5%:
  - Maximum 5% of the total taxable business income for the 2006 assessment year
  - For this purpose, unused pre-2006 losses cannot be carried against 2006 taxable income
- Schedule of Rates:
  - 0% rate for 0 – R35 000
  - 2% rate for R35 001 to R100 000
  - 3% rate for R100 001 to R250 000
  - 4% rate for R250 001 to R500 000
  - 5% rate for R500 001 or more

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 **No SARS Pre-Amnesty Contact  
(Clauses 5 & 10)**


- The basic amnesty will generally be denied if SARS issues a notice to the applicant (or the applicant's representative) before the amnesty submission of an:
  - Audit,
  - Investigation; or
  - Other enforcement action
 Relating to a period otherwise covered by the amnesty
- The term "enforcement action" will be clarified by the Commissioner via Gazette
- Note: SARS notice will be ignored if withdrawn or finalised before submitting the amnesty application

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 **Amnesty Relief  
(Clause 8)**


- One: The amnesty covers improperly undeclared or unpaid business income (including incidental investment income):
  - Income Tax and STC amounts arising before the 2006 assessment year; and
  - VAT, PAYE, UIF, SDL and Royalty Withholding before 1 March 2006
- Two: The amnesty similarly covers:
  - Additional tax, penalties and interest
  - Criminal prosecution for failure to disclose

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 **No Carry Forward Benefits  
(Clause 11)**


- Taxpayers may not carryover tax benefits from a pre-2006 year
- Hence,
  - Loss carryovers,
  - STC credits, and
  - VAT input credits
 Cannot be utilised if stemming from a pre-2005 year receiving amnesty relief

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 **Amnesty Process  
(Clause 5)**

- Amnesty approval is non-discretionary
- Amnesty applications will be reviewed by a separate SARS unit with regional presence
- SARS notice of amnesty approval or denial is required
- All SARS decisions are subject to objection and appeal


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### Not For Organised Crime (Clause 10, FICA Regulations)

- The Amnesty does not apply to fraudulent VAT schemes:
  - VAT refunds based on the submission of fictitious purchase invoices
  - VAT refunds based on fictitious zero-rated exports for sales actually occurring locally
- The Financial Intelligence Act will not prevent advisors from providing tax advice, but they must disclose applicants involved in other offences (drug dealing, money laundering, etc...)


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### Amnesty Subsequently Void (Clause 12)

- Despite initial SARS approval, amnesty approval will later become void if:
  - The applicant subsequently fails to pay the full 10% levy (12 months+);
  - The taxpayer failed to make full disclosure of business income for 2006; or
  - Estimates (if any) are materially incorrect


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### Outstanding Debt Amnesty (Clause 13)

- Taxpayers (and their representatives) will receive an outstanding debt amnesty if they have not yet paid, but have:
  - Submitted a return or information indicating payment due; or
  - SARS indicates payment is due via SARS assessment
- Coverage: Penalty, additional tax and interest
- Process: Ministerial regulation for public comment and Parliamentary scrutiny


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### Parliamentary Report (Clause 7 – 2<sup>nd</sup> Bill)


- The success of the amnesty must be reported to Parliament
- These details include:
  - Number of applications received
  - Number of applications approved and denied
  - Number of new taxpayer registrations (per tax type)
  - All amnesty levies payable
  - Retention of new taxpayers on the register for 2008 and 2009

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### Municipalities and Technical Corrections . . .


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### Municipalities

- SARS Interpretation Note to be released to cover issues, such as service fees versus fines and grants versus service charges
- Regulations under section 74 will be utilised to defer penalties and interest by 6 months for municipalities initially failing to properly standard rate under the new regime
- Zero-rated property rates will not include service charges based on property values
- Pre-effective date status of waterboards to be clarified


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### Transitional Petroleum Incentives (Schedule 3)

- OP 26 oil and gas leases and subleases operating along the SA coast have been eligible for tax incentives since 1977
- Conversion to "new order" rights and wholly new applications technically fall outside these incentives
- The Bill carries over these incentives until the sooner of 1 May 2009 or revised legislation (due in October)


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### UST and the Sale of Partial Share Rights (Clauses 56 and 57)

- In 2005, Government adopted UST rules for treating all off-market sales as occurring at a market value for at least equal to the "total" listed share value
- This deeming rule inadvertently applied to the sale of partial rights (dividend and voting cessions), triggering a tax on value equal to the "total" share value
- The change limits the deeming rule to the market value of the partial right
- The same problem will be remedied for partial sales via participants (e.g. banks)


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# THANK YOU




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
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