

# Small Business Tax Amnesty Debt Waiver Regulations

30 March 2007



## Purpose and objectives of amnesty

- Broaden the tax base
- Facilitate the normalisation of tax affairs of small businesses
- Increase and improve the tax compliance culture
- Facilitate participation in the taxi recapitalisation program



## Disqualified amounts

- Amnesty is for tax on business and does *not* apply to any tax, levy, contribution, additional tax, penalty or interest which
  - Has already been paid before application for tax amnesty
  - *Becomes payable as a result of any return, declaration or information already submitted to SARS before the application*
  - *Is payable by the applicant in terms of an assessment issued by SARS before the application*
  - Relates to VAT not paid as a result of a false declaration of the acquisition, import or export of goods or services that did not actually occur



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## Partial relief for disqualified amounts

- Section 13(1) of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, provides
  - ... the Minister may by regulation prescribe the circumstances upon which the Commissioner may waive any amount of additional tax, penalty or interest
  - ... payable in respect of the period for which amnesty is available
  - ... by a person who meets the criteria for amnesty as far as type of entity and size of gross income from business are concerned
  - ... but to whom the tax amnesty relief will not apply as a result of two of the disqualifications from amnesty
  - ... where that waiver would facilitate the normalisation of the tax affairs of small businesses



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## Partial relief for disqualified amounts

- Section 13(2) provides that the Minister must prescribe
  - the procedures to be followed by the Commissioner in waiving any amount and
  - the requirements for reporting by the Commissioner of any amounts which have been waived
- Section 13(3) provides that the Minister must
  - publish the draft regulations in the Gazette for public comment and
  - submit the draft regulations to Parliament for parliamentary scrutiny at least 30 days prior before they are published

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## Draft regulations

- Published for public comment on 24 January 2007
- Comment period closed on 9 February 2007
- Finalised after consideration of comments and tabled on 14 March 2007
- Closely linked with principles in main amnesty

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## Definitions

- A key definition is “business tax debt” which is essentially *additional tax, penalties and interest* relating to the taxes on business for the period covered by the amnesty
- For example
  - Income tax payable in respect of an amount received by or accrued to a person in the carrying on of a business for years prior to the 2006 year of assessment
  - Employees’ tax payable in respect of any remuneration paid to employees engaged in the carrying on of a business in the period up to 28 February 2006
  - VAT in respect of any supply or importation of goods or services for the period up to 28 February 2006

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## Application of regulations

- Applicant must satisfy the requirements as set out in section 2 of the Amnesty Act,
  - The applicant must be
    - An individual (including a deceased or insolvent estate)
    - An unlisted company (including a close corporation, co-operative, etc.) where all the shares or members’ interests were held by individuals throughout the 2006 year of assessment
    - A trust where all beneficiaries of that trust throughout the 2006 year of assessment were natural persons
  - Gross income from business must be no more than R10 million in 2006 year of assessment

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## Application of regulations (cont.)

- Amnesty relief must not be available because the tax, levy, contribution, additional tax, penalty or interest
  - Becomes payable as a result of any return, declaration or information already submitted to SARS
  - Is payable by the applicant in terms of an assessment issued by SARS

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## Application for waiver

- Applicant must submit an application form to Commissioner
  - By no later than 31 May 2007 at the address and in the manner and form prescribed
  - Setting out categories of business tax debt to be waived

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## Application for waiver (cont.)

- The following must accompany the application form
  - A statement of assets and liabilities at the end of the 2006 year of assessment
  - All returns outstanding from that applicant as on 31 December 2006 (with an exception for cases where the applicant also has an amnesty application pending)
- If records are insufficient, the applicant may provide reasonable estimates of the required amounts. The fact that an estimate has been used must be disclosed to the Commissioner

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## Approval of application

- Commissioner *must* approve the application if the applicant meets the above requirements unless, before the submission of the application:
  - The Sheriff of the High Court has attached the assets of the applicant in execution of a writ of execution obtained on behalf of the Commissioner in satisfaction of the debt to be waived
  - Sequestration or liquidation proceedings have been instituted against the applicant
  - The Commissioner has formally notified the applicant of an audit or investigation. (Exclusion falls away if the notice is withdrawn or the applicant is notified that the audit or investigation has been concluded)

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## Amount that may be waived

- The amount to be waived is the business tax debt outstanding as on 31 December 2006
- Any credits or refunds due on that date must first be set-off against the business tax debt outstanding on that date

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## Amount that may *not* be waived

- Amounts in excess of a cap of R1 million
- Amounts paid after 31 December 2006 that exceed the actual underlying tax (i.e. the tax on which the additional tax, penalty and interest were calculated) and any other tax debts of the applicant outstanding on that date

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## Agreement of waiver

- The Commissioner and the applicant must sign an agreement which provides
  - That the balance of the tax debt (if any) together with interest be settled within six months from date of signature of the agreement (with a discretion to extend the six month period)
  - For any other conditions that the Commissioner may require for purpose of the waiver

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## Commissioner not bound to the waiver

- The Commissioner is not bound to the waiver if the applicant
  - Failed to make full disclosure in application form, statement of assets and liabilities or returns as required in terms of the regulations
  - Supplied any materially incorrect information
  - Fails to comply with any condition contained in the agreement of waiver

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## Record keeping and reporting

- The Commissioner must maintain a register of applicants' details, the amounts waived, and the periods to which the waivers related
- Reporting is aligned with the reports submitted in terms of the main amnesty legislation

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Questions

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