



DAVEY'S Locker



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Voluntary disclosure tax relief

The new amnesty

by Tony Davey

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The Minister of Finance has published for comment the draft Taxation Laws Second Amendment Bill 2010 containing tax amnesty provisions, officially titled 'Voluntary Disclosure Relief'.

The essential features of the tax relief are as follows:

- A tax default, being either the submission of inaccurate or incomplete information to SARS or a nonsubmission resulting in no or incorrect tax assessments, qualifies for the relief.
- The relief applies to a 'person', which includes natural persons, juristic entities such as close corporations and companies and trusts.
- The relief extends to all taxes (such as income tax, VAT, transfer duty, estate duty, donations tax), in that it applies to any legislation administered by the Commissioner for SARS.
- A person may apply for the relief except when aware of a current SARS audit or investigation or that such an audit or investigation is pending. Nevertheless, the Commissioner may condone such a situation should he consider it to be in the interests of good management of the tax system and the best use of his resources. (The Commissioner

may issue a nonbinding private opinion as to a person's eligibility for relief, provided sufficient information, which need not include any party's identity, is provided.)

- The relief period pertains to tax defaults that occurred at least twelve months before a date to be gazetted, which I understand will be 1 November 2010, and thus applies to defaults on or before 31 October 2009.

Nature of tax relief

- No criminal prosecution, whether for a statutory or common-law offence.
- 100% relief from the imposition of penalties and additional tax, but excluding the new administrative penalties.
- 100% relief from any charge of interest, and 50% for persons currently under audit investigation or aware of a pending investigation.

Tax still payable

The relief does not extend to the actual tax payable by a qualifying person, who must enter into a written agreement with SARS regarding procedural matters, including payment dates.

My major concern is that there is currently no prescription period for previous tax defaults. For example, if a person has failed to declare say, offshore taxable

investment income since its fuller introduction into our tax legislation in 1996, he or she is still liable for the actual tax payable, retrospectively. My constructive suggestion is that the retrospective tax period be limited at least to the three-year period envisaged in s 79 of the Income Tax Act, on the rationale that there is deemed to have been full disclosure for tax assessment purposes.

Postscript

The South African Reserve Bank has also published details of a separate Exchange Control relief

programme for excon breaches (see 87 *TSH* 2010).

In essence, persons (both natural and juristic) may regularize their affairs, while levies range from zero for mere technical breaches to 10% (levy payment from foreign funds) or 12% (levy payment from local funds) of the fair market value of unauthorized foreign assets as at 28 February 2010, with a credit against the fair market value for any unused R4 million offshore investment allowance. ■