

Yet another amnesty ... use it to buy peace of mind

By Johan Kotze

Yet another amnesty is upon us and, again, those who have crooked their tax can come clean.

Regrettably, for those of you who did what you had to and complied, there's nothing. Even though you declared fully and paid your tax, no vestige of appreciation is forthcoming.

Morally this is wrong. One can accept a focused amnesty, where a certain type of taxpayer or area of a tax act was misunderstood. But the new blanket-type amnesty has little to commend it.

Be that as it may, the new amnesty provides you with an opportunity to fix your tax indiscretions.

In particular, this is a serious opportunity for corporates to clean their slate, as there is no limit to the type of taxpayer who is eligible to claim amnesty in the Voluntary Disclosure Programme. This amnesty is available to all, whether in a personal, representative, withholding or other capacity.

Bear in mind two dates:

- the indiscretion should have occurred prior to 17 February 2010, and
- the disclosure should be made on or before 31 October 2011.

The Voluntary Disclosure Programme (VDP) defines the term 'default' quite broadly as:

'the submission of inaccurate or incomplete information to the Commissioner, or the failure to submit information or the adoption of a tax position, where such submission, non-submission, or adoption resulted in –

- (a) the taxpayer not being assessed for the correct amount of tax;*
- (b) the correct amount of tax not being paid by the taxpayer; or*
- (c) an incorrect refund being made by the Commissioner;'*

A VDP limitation is that the relief will not be applicable if the taxpayer is aware of a pending audit by SARS into his affairs, or an audit by SARS that has commenced, but has not yet been concluded.

This limitation is not, however, applicable if SARS considers that the default would not otherwise have been detected during the audit. SARS may also disregard this limitation if it regards the application to be in the interest of good management of the tax system and the best use of SARS's resources.

The relief a taxpayer will enjoy is:

- Immunity from being criminally prosecuted;
- A 100% waiver of any penalty or additional penalty taxes;
- A 100% waiver of interest.

In cases where the audit limitation is relaxed the interest waiver is limited to 50%.

This amnesty is not a blanket waiver of all previous taxes. It is limited to the specific default and when the taxpayer applies for amnesty the taxpayer will have to make a

full and complete disclosure of the default. The amnesty agreement between SARS and the taxpayer has to detail how the default will be treated in the future.

It is not clear from the legislation if the future treatment would be a condition of the agreement, but if so, the amnesty itself may be reliant on the taxpayer not transgressing on similar bases in the future.

This amnesty is not a waiver of the tax itself, which makes it less attractive than the previous amnesties, but it does not require immediate payment of the tax. The amnesty agreement will reflect the amount of tax payable by the person and the payment arrangement.

In the event that, subsequent to the conclusion of the voluntary disclosure agreement, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure SARS may:

- withdraw any relief granted;
- regard any amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax in respect of the relevant default; and
- pursue prosecution for any statutory offence or a related common law offence.

Undeclared income has a way of coming to the attention of SARS, and for some of us such transgressions may cause sleepless nights. Therefore, make use of this amnesty and buy yourself some peace of mind.

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