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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. R. 361

20 April 2007

REGULATIONS ISSUED UNDER SECTION 13 OF THE SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS ACT, 2006 (ACT NO. 9 OF 2006), PRESCRIBING THE CIRCUMSTANCES UNDER WHICH THE COMMISSIONER MAY WAIVE ANY AMOUNT OF ADDITIONAL TAX, PENALTY OR INTEREST PAYABLE BY SPECIFIC PERSONS

By virtue of section 13 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, I, Trevor Andrew Manuel, Minister of Finance, hereby publish the regulations set out in the Schedule hereto.

These regulations prescribe the circumstances under which the Commissioner for the South African Revenue Service may waive, in whole or in part, any amount of additional tax, penalty and interest payable by a person in terms of certain Acts administered by the Commissioner, where that waiver would facilitate the purpose and objective of the tax amnesty as contemplated in section 1(b) of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006).

T. A. MANUEL
MINISTER OF FINANCE

SCHEDULE

Definitions

1. For purposes of these regulations, unless the context indicates otherwise, any meaning ascribed to a word or expression in the Income Tax Act, 1962 (Act No. 58 of 1962), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Skills Development Levies Act, 1999 (Act No. 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), the Small Business Tax Amnesty and Amendment of Taxation Laws Amendment Act, 2006 (Act No. 9 of 2006) and the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006) must bear the meaning so ascribed, and—

“tax amnesty relief” means the tax amnesty relief provided for in Chapter 1 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006;

“business tax debt” means any additional tax, interest and penalty imposed in respect of any amount of—

- (a) income tax, payable in terms of the Income Tax Act in respect of any amount received by or accrued to (or deemed to have been received by or accrued to) a person during the qualifying period from the carrying on of a business
- (b) employees’ tax, payable in terms of the Fourth Schedule to the Income Tax Act, in respect of any remuneration as defined in that schedule paid to employees engaged in the carrying on of any business during the qualifying period;
- (c) value-added tax, payable in terms of the Value-Added Tax Act, in respect of any supply or importation of goods or services during the qualifying period;
- (d) withholding tax on royalties, payable in terms of the Income Tax Act, in respect of any amount paid during the qualifying period to any person who is not a resident;
- (e) secondary tax on companies, payable in terms of the Income Tax Act, in respect of any dividend declared or deemed to be declared for the

purpose of section 64B of the Income Tax Act during the qualifying period;

- (f) contributions, payable in terms of the Unemployment Insurance Contributions Act, in respect of any remuneration, as defined in that Act, paid in the course of the carrying on of any business during the qualifying period;
- (g) levies, payable in terms of the Skills Development Levies Act, in respect of any leviable amounts as contemplated in that Act, determined in respect of the qualifying period; and

“waive” in relation to a business tax debt, means to relinquish the right to that business tax debt (or a portion thereof) in terms of these regulations.

Purpose of regulations

2. The purpose of these regulations is to prescribe the circumstances upon which the Commissioner may waive a business tax debt in order to facilitate the purpose and object of the tax amnesty.

Application of regulations

3. These regulations apply in respect of a business tax debt payable by a person who satisfies the requirements as set out in section 2 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, but to whom the tax amnesty relief does not apply as a result of the circumstances contemplated in section 10(b) or (c) of that Act.

Application for waiver

4. A person (hereinafter referred to as “the applicant”) applying for the waiver of a business tax debt in terms of these regulations must submit an application to the Commissioner—
 - (a) by no later than 31 May 2007; and
 - (b) at the address and in the manner and form prescribed by the Commissioner.

Information required in application

5. (1) The applicant must, in the application for waiver, list the category or categories of business tax debt to be waived by the Commissioner.

(2) Subject to subparagraph (3), the applicant must furnish together with the application for waiver or within such period as the Commissioner may allow—

(a) a statement of all assets (at cost) and liabilities of that applicant as at the end of the 2006 year of assessment; and

(b) all returns outstanding from that applicant as on 31 December 2006 that have not been furnished before the submission of the application for waiver.

(3) If the applicant has applied for tax amnesty relief and a return would no longer be required were that tax amnesty relief to be granted, the applicant need not furnish that return unless and until that application for tax amnesty relief has been denied.

(4) If it is not possible for the applicant to provide full particulars of any actual amounts in the application or in any return or statement relating to the application, the applicant may provide reasonable estimates of those amounts and must disclose to the Commissioner that the amounts provided are estimates.

Approval of application to waive business tax debt

6. (1) Subject to paragraph 7, the Commissioner must approve the application for waiver in respect of that applicant if all the requirements of paragraphs 3, 4 and 5 are met.

(2) The Commissioner must deliver to the applicant a notice of his or her decision to approve or deny the application for waiver and must set out the reasons for any decision to deny that application;

Circumstances where not appropriate to waive business tax debt

7. (1) The Commissioner may not waive a business tax debt if, before the submission of the application for waiver—
- (a) 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 business tax debt;
 - (b) sequestration or liquidation proceedings have been instituted against the applicant; or
 - (c) the Commissioner has delivered a notice to that applicant or that applicant's representative informing that applicant of an audit or investigation relating to any failure by that applicant to comply with any Act administered by the Commissioner.
- (2) Subparagraph (1)(c) will not apply if the Commissioner has, before the submission of the application for waiver, delivered a notice that—
- (a) the notice contemplated in that subparagraph has been withdrawn; or
 - (b) the audit or investigation contemplated in that subparagraph has been concluded.

Amount to be waived

8. (1) Subject to paragraph 9, the amount of the business tax debt that must be waived by the Commissioner is the amount of the business tax debt that is outstanding at the close of business on 31 December 2006.
- (2) In determining the amount of the business tax debt outstanding at the close of business on 31 December 2006 any credits or refunds due on that date to the applicant in respect of any tax must first be off-set against the business tax debt outstanding on that date;

Amounts that may not be waived

9. The Commissioner may not waive a business tax debt to the extent that—
- (a) the business tax debt exceeds an amount of R1 million; or

- (b) an amount paid after the close of business on 31 December 2006 in respect of business tax debt or other tax debt outstanding on that date exceeds the amount of other tax debt outstanding on that date.

Agreement setting out conditions of waiver

10. If the Commissioner approves the application for waiver in accordance with paragraph 6, the Commissioner and the applicant must sign an agreement which provides—

- (a) that the balance of the tax debt (if any) together with any interest thereon must be settled by the applicant within six months from date of signature of the agreement or such longer period as the Commissioner may determine; and
- (b) for any other conditions that the Commissioner may require for purposes of the waiver of the business tax debt.

Commissioner not bound to waiver

11. The waiver will be void *ab initio* if the applicant—

- (a) failed to make full disclosure in the application for waiver of all information required in the application, including any statement or return contemplated in paragraph 5;
- (b) supplied any materially incorrect information to which the waiver relates; or
- (c) fails to comply with any condition contained in the agreement contemplated in paragraph 10.

Records of tax debts waived

12. (1) The Commissioner must maintain a register of all business tax debts waived in terms of these regulations.

(2) The register contemplated in subparagraph (1) must contain—

- (a) the details of the applicant, including name, address and tax reference numbers; and

- (b) the amount of the business tax debt waived and the periods to which that business tax debt relates.

Reporting

13. At the time the Commissioner provides the Minister and Auditor-General with a report as contemplated in section 7 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, the Commissioner must also include, in that report, a summary of all business tax debts waived, in whole or in part, in terms of these regulations during the period covered by the report.

GOEWERMENTSKENNISGEWING

SUID-AFRIKAANSE INKOMSTEDIENS

No. R. 361

20 April 2007

REGULASIES UITGEVAARDIG INGEVOLGE ARTIKEL 13 VAN DIE WET OP KLEINBESIGHEIDSBELASTINGAMNESTIE EN WYSIGING VAN BELASTINGWETTE, 2006 (WET NR. 9 VAN 2006), WAT DIE OMSTANDIGHED E VOORSKRYF WAARONDER DIE KOMMISSARIS ENIGE BEDRAG VAN ADDISIONELE BELASTING, BOETE OF RENTE BETAALBAAR DEUR SPESIFIEKE PERSONE KAN KWYTSKELD

Kragtens die bevoegdhede aan my verleen ingevolge artikel 13 van die Wet op Kleinbesigheidsbelastingamnestie en Wysiging van Belastingwette, 2006, publiseer ek, Trevor Andrew Manuel, Minister van Finansies, hiermee die regulasies uiteengesit in die Bylae hierby.

Hierdie regulasies beskryf die omstandighede waaronder die Kommissaris van die Suid-Afrikaanse Inkomstediens enige bedrag van addisionele belasting, boete of rente deur 'n persoon betaalbaar ingevolge sekere Wette deur die Kommissaris gadministreer, in geheel of gedeeltelik kan kwytskeld, waar daardie kwytskelding die doel en oogmerk van die belastingamnestie soos bedoel in artikel 1(b) van die Tweede Wet op Kleinbesigheidsbelastingamnestie en Wysiging van Belastingwette, 2006 (Wet Nr. 10 van 2006) bedoel sal fasiliteer.

T. A. MANUEL
MINISTER VAN FINANSIES

BYLAE**Woordomskrywings**

1. In hierdie regulasies, tensy uit die samehang anders blyk, het enige woord of uitdrukking waaraan daar in die Inkomstebelastingwet, 1962 (Wet Nr. 58 van 1962), die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet Nr. 89 van 1991), die “Skills Development Levies Act”, 1999 (Wet Nr. 9 van 1999), die “Unemployment Insurance Contributions Act”, 2002 (Wet Nr. 4 of 2002), die Wet op Kleinbesigheidsbelastingamnestie en Wysiging van Belastingwette, 2006 (Wet Nr. 9 van 2006) en die Tweede Wet op Kleinbesigheidsbelastingamnestie en Wysiging van Belastingwette, 2006 (Wet Nr. 10 van 2006) ‘n betekenis geheg word, sodanige betekenis, en—

“belastingamnestie verligting” beteken die belastingamnestie verligting soos bedoel in Hoofstuk 1 van die Wet op Kleinbesigheidsbelastingamnestie en Wysiging van Belastingwette, 2006;

“besigheidsbelastingskuld” beteken enige addisionele belasting, rente en boete gehef ten opsigte van enige bedrag—

- (a) inkomstebelasting, ingevolge die Inkomstebelastingwet betaalbaar ten opsigte van enige bedrag ontvang deur of toegeval aan (of geag word ontvang te wees of toe te geval het aan) ‘n persoon gedurende die kwalifiserende tydperk uit die bedryf van enige besigheid;
- (b) werknemersbelasting, ingevolge die Vierde Bylae van die Inkomstebelastingwet betaalbaar, ten opsigte van enige besoldiging soos in daardie Bylae omskryf wat gedurende die kwalifiserende tydperk aan werknemers betrokke in die bedryf van enige besigheid betaal is;
- (c) belasting op toegevoegde waarde, ingevolge die Wet op Belasting op Toegevoegde Waarde betaalbaar, ten opsigte van enige lewering of invoer van goed of dienste gedurende die kwalifiserende tydperk;
- (d) terughoudingsbelasting op tantieme ingevolge die Inkomstebelastingwet betaalbaar, ten opsigte van enige bedrag gedurende die kwalifiserende tydperk aan enige persoon betaal wat nie ‘n inwoner is nie;

- (e) sekondêre belasting op maatskappye, ingevolge die Inkomstebelastingwet betaalbaar, ten opsigte van enige dividend verklaar of geag verklaar te wees by die toepassing van artikel 64B van die Inkomstebelastingwet gedurende die kwalifiserende tydperk;
 - (f) bydraes ingevolge die “Unemployment Insurance Contributions Act” betaalbaar ten opsigte van enige “vergoeding soos in daardie Wet omskryf, betaal gedurende die kwalifiserende tydperk, in die loop van die bedryf van enige besigheid;
 - (g) heffings ingevolge die “Skills Development Levies Act” betaalbaar ten opsigte van enige “leviable amounts” soos beoog in daardie Wet gedurende die kwalifiserende tydperk; en
- “kwytskeld” ten opsigte van ‘n besigheidsbelastingskuld, beteken om die reg op daardie besigheidsbelastingskuld (of ‘n gedeelte daarvan) ingevolge hierdie regulasies kwyts te skeld.

Doel van regulasies

2. Die doel van hierdie regulasies is om die omstandighede voor te skryf waaronder die Kommissaris ‘n besigheidsbelastingskuld mag kwytskeld ten einde die doel en oogmerk van die belastingamnestie te fasiliteer.

Toepassing van regulasies

3. Hierdie regulasies is van toepassing op ‘n besigheidsbelastingskuld betaalbaar deur ‘n persoon wat die vereistes soos uiteengesit in artikel 2 van die Wet op Kleinbesigheidsbelastingamnestie en Wysing van Belastingwette, 2006, nakom, maar op wie die belastingamnestieverligting nie van toepassing is nie as gevolg van die omstandighede in artikel 10(b) of (c) van daardie Wet bedoel.

Aansoek om kwytskelding

4. 'n Persoon (hierna die "applikant" genoem) wie ingevolge hierdie regulasies aansoek doen vir die kwytskelding van 'n besigheidsbelastingenskuld moet 'n aansoek by die Kommissaris indien—

- (a) teen nie later nie as 31 Mei 2007; en
- (b) by die adres en op die wyse en in die vorm wat die Kommissaris voorskryf.

Inligting vereis in aansoek

5. (1) Die applikant moet, in die aansoek om kwytskelding, die kategorie of kategorieë besigheidsbelastingenskuld wat deur die Kommissaris kwytgeskeld moet word, lys.

(2) Onderhewig aan subparagraaf (3), moet die applikant, tesame met die aansoek om kwytskelding, of binne sodanige tydperk wat die Kommissaris mag bepaal—

- (a) 'n staat van alle bates (teen koste) en laste van daardie applikant soos aan die einde van die 2006 jaar van aanslag; en
- (b) alle uitstaande opgawes van daardie applikant soos op 31 Desember 2006, wat nie verskaf is voor die indiening van die aansoek om kwytskelding nie;

verskaf.

(3) Indien die applikant vir belastingamnestie verligting aansoek gedoen het en 'n opgawe nie meer benodig word nie sou daardie belastingamnestieverligting toegestaan word, hoef die applikant nie meer daardie opgawe in te dien nie, tensy en totdat die aansoek vir belastingamnestieverligting afgekeur is.

(4) Indien dit nie moontlik is vir die applikant om volle besonderhede van enige werklike bedrae in die aansoek of in enige opgawe of staat met betrekking tot die aansoek te verskaf nie, kan die applikant redelike skattings van daardie bedrae voorsien en moet aan die Kommissaris verklaar dat die bedrae voorsien skattings is.

Goedkeuring van aansoek om kwytskelding van besigheidsbelastingskuld

6. (1) Die Kommissaris moet, behoudens paragraaf 7, 'n aansoek om kwytskelding ten opsigte van 'n applikant goedkeur indien aan al die vereistes van paragrawe 3,4 en 5 voldoen is.

(2) Die Kommissaris moet aan die applikant 'n kennisgewing van sy of haar beslissing om die aansoek vir kwytskelding goed te keur of te verwerp lewer en moet die redes vir enige beslissing om daardie aansoek te verwerp, uiteensit.

Omstandighede waar dit nie gepas is om 'n besigheidsbelastingskuld kwyt te skeld nie

7. (1) Die Kommissaris mag nie 'n besigheidsbelastingskuld kwyt skeld nie, indien, voor die indiening van die aansoek vir kwytskelding—

(a) die Balju van die Hoë Hof beslag gelê het op die bates van die applikant ter uitvoering van 'n lasbrief vir beslaglegging verkry namens die Kommissaris ter bevrediging van die besigheidsbelastingskuld;

(b) sekwestrasie- of likwidasiestappe reeds teen die applikant ingestel is; of

(c) die Kommissaris 'n kennisgewing aan daardie applikant of daardie applikant se verteenwoordiger gelewer het waarin daardie applikant ingelig word van 'n oudit of ondersoek met betrekking tot enige nalate deur daardie applikant om aan enige Wet geadministreer deur die Kommissaris te voldoen.

(2) Subparagraaf (1)(c) sal nie van toepassing wees nie indien die Kommissaris, voor die indiening van die aansoek om kwytskelding 'n kennisgewing gelewer het dat—

(a) die kennisgewing beoog in daardie subparagraaf ingetrek is; of

(b) die oudit of ondersoek beoog in daardie subparagraaf afgehandel is.

Bedrag wat kwytgeskeld kan word

8. (1) Behoudens paragraaf 9, is die bedrag besigheidsbelastingeskuld wat deur die Kommissaris kwytgeskeld moet word die bedrag van die besigheidsbelastingeskuld wat uitstaande is teen sluiting van besigheid op 31 Desember 2006.

(2) Ten einde die bedrag van die besigheidsbelastingeskuld wat uitstaande is teen sluiting van besigheid op 31 Desember 2006 te bepaal moet enige krediete of terugbetalings ten opsigte van enige belastinge aan die applikant op daardie datum verskuldig eers verreken word teen die besigheidsbelastingeskuld uitstaande op daardie datum.

Bedrae wat nie kwytgeskeld mag word nie

9. Die Kommissaris mag nie 'n besigheidsbelastingeskuld kwytgekeld tot die mate wat—

- (a) die besigheidsbelastingeskuld die bedrag van R1 miljoen oorskry nie; of
- (b) 'n bedrag betaal na die sluiting van besigheid op 31 Desember 2006 ten opsigte van 'n besigheidsbelastingeskuld of ander belastingeskuld uitstaande op daardie datum die bedrag van ander belastingeskuld uitstaande op daardie datum oorskry nie.

Ooreenkoms wat voorwaardes vir kwytskelding uiteensit

10. Indien die Kommissaris die aansoek om kwytskelding goedkeur ooreenkomstig paragraaf 6, moet die Kommissaris en die applikant 'n ooreenkoms onderteken wat voorsiening maak—

- (a) dat die balans van die belastingeskuld (indien enige) tesame met enige rente daarop binne 6 maande vanaf datum van ondertekening van die ooreenkoms, of sodanige langer tydperk as wat die Kommissaris mag toelaat, betaal moet word; en
- (b) vir enige ander voorwaardes wat die Kommissaris mag vereis vir doeleindes van die kwytskelding van die besigheidsbelastingeskuld.

Kommissaris nie gebonde aan die kwytskelding

11. Die kwytskelding sal *ab initio* nietig wees indien die applikant—
- (a) nalaat om in die aansoek om kwytskelding 'n volle openbaarmaking te maak van alle inligting vereis in die aansoek, ingesluit enige staat of opgawe soos in paragraaf 5 beoog;
 - (b) enige weselik foutiewe inligting verstrek het wat op die kwytskelding betrekking het; of
 - (c) versuim om enige voorwaarde vervat in die ooreenkoms soos bedoel in paragraaf 10, na te kom.

Register van belastingskulde kwytgeskeld

12. (1) Die Kommissaris moet 'n register van alle besigheidsbelastingkulde kwytgeskeld ingevolge hierdie regulasies byhou.
- (2) Die register in subparagraaf (1) bedoel moet—
- (a) die inligting van die applikant, ingesluit naam, adres en belastingverwysingsnommers, bevat; en
 - (b) die bedrag van die besigheidsbelastingkuld kwytgeskeld en die tydperke waarop die besigheidsbelastingkuld betrekking het, aantoon.

Verslagdoening

13. Op die tydstip wat die Kommissaris die Minister en die Ouditeur-Generaal voorsien van 'n verslag soos beoog in artikel 7 van die Tweede Wet op Kleinbesigheidsbelastingamnestie en Wysiging van Belastingwette, 2006, moet die Kommissaris ook in daardie verslag insluit, 'n opsomming van alle besigheidsbelasting kwytgeskeld, in geheel of gedeeltelik, ingevolge hierdie regulasies gedurende die tydperk deur die verslag gedek.