Treasury simplifies tax amnesty draft

By Hilary Joffe

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The Treasury has made significant changes to draft legislation on the new tax amnesty on offshore assets that takes effect later in 2016 in a bid to make it simpler for taxpayers to come clean on any foreign income and assets they have not declared to the taxman.

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Finance Minister Pravin Gordhan announced in his February budget speech that taxpayers with undeclared offshore assets would have six months to regularise their affairs in exchange for tax and exchange-control relief.

The amnesty comes ahead of the implementation in September 2017 of a new global agreement that will see the revenue authorities of more than 50 countries, including SA, sharing information. "This is the last chance for taxpayers to come clean, ahead of the coming into effect next year of the Automatic Exchange of Information," the Treasury's chief director for tax design, Yanga Mputa, said.

The Treasury released on Wednesday, 20 July 2016, a third version of the draft bill on the Special Voluntary Disclosure Programme, which Mputa said tackled criticism from tax practitioners that the earlier drafts were too complicated. Whereas the previous bills taxed both "seed capital" and income earned offshore, the new draft legislation will, in effect, tax only 50% of the value of the capital that an applicant for amnesty had built up abroad and failed to disclose.

Those assets will have to be valued at the peak market value, translated into rand, over the five-year period from 1 March 2010 to 28 February 2015, and the amount will be added to a taxpayer's taxable income in a single year, and taxed at their maximum marginal rate.

The Treasury's revised tax bill follows the Reserve Bank's release last week of a circular that outlines the rules for the exchange control side of the amnesty.

Applicants will have to make full disclosure of any undisclosed offshore assets, and those who choose to keep their assets offshore will have to pay a 10% levy on the value of these (or 12% if they want to pay the levy using out-of-SA funds), or a 5% levy if they opt to bring the assets back to SA.

The tax and exchange-control processes will run simultaneously, although separately. And, although the tax legislation will be considered by Parliament only once it resumes in August after the local government elections, Mputa said the legislation would be deemed to be in force from 1 October, even if it had not been signed into law by then.

It is not clear how much in undisclosed offshore money is out there, but tax lawyers and accountants report plenty of interest in the amnesty from clients.

"We understand that there are still some very significant undeclared assets sitting offshore," PwC tax partner Kyle Mandy said.

Norton Rose Fulbright director for tax Dale Cridlan said it was too early to tell whether the new draft bill would achieve the results that the Treasury expected. "How taxpayers respond will depend on each individual's circumstances," he said.

"But taxpayers may want to consider that no penalties will be imposed for coming forward."

Mputa said the Treasury had not estimated how much revenue the programme would raise. But Mandy said the Treasury would want to be sure to bring in some extra revenue in the current fiscal year, with tax receipts for the first two months of the fiscal year lagging budget estimates.

Although it is too early to judge the trend, value-added tax collections, which are budgeted to increase 7.2% for the 2016-17 fiscal year, were up only 0.7% for the first two months and total revenue was up 6.7%, against the 9.8% projected for the full year, Mandy said. June is the first big month for corporate income tax collections and may show the effects of a weaker economy.

SA's last exchange control and tax amnesty in 2003 revealed R69bn of undisclosed offshore assets, of which R48bn was illegal, and brought in R2.9bn of levies.

In terms of the new draft bill, and the Reserve Bank rules, anyone who is already being investigated for tax or exchange control contraventions will not be eligible for the amnesty.

Furthermore, any taxpayers whose affairs have been disclosed to the South African Revenue Service by a revenue authority in another jurisdiction will also not be eligible.

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