

(29 September 2003 - to date)

## **EXCHANGE CONTROL AMNESTY AND AMENDMENT OF TAXATION LAWS ACT 12 OF 2003**

*(Government Notice 730 in Government Gazette 25047 dated 31 May 2003. Commencement date: 31 May 2003 – unless otherwise indicated)*

### **REGULATIONS ISSUED IN TERMS OF SECTION 30 OF THE EXCHANGE CONTROL AMNESTY AND AMENDMENT OF TAXATION LAWS ACT 12 OF 2003**

*Government Notice R1368 in Government Gazette 25511 dated 29 September 2003. Commencement date: 29 September 2003.*

By virtue of the power vested in me by section 30 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. 12 of 2003), I, Alec Erwin, Acting Minister of Finance, hereby make the following regulations, as set out in the Schedule hereto, to give effect to the objects and purposes of Chapter I of that Act and to address certain unintended consequences, anomalies and incongruities in the Act.

(Signed)

**ALEC ERWIN, MP**

**ACTING MINISTER OF FINANCE**

### **SCHEDULE**

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## 1. Definitions

For the purposes of these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, ("the Act") bears the meaning assigned thereto, and-

**"disposal"** means "disposal" as defined in the Eighth Schedule to the Income Tax Act, 1962;

**"Income Tax Act, 1962"**, means the Income Tax Act, 1962 (Act No. 58 of 1962).

## 2. Provisions relating to donors to discretionary trust

For purposes of Chapter I of the Act-

- (a) a donor includes a person at whose instance a donation was made by any other person; and
  - (b) a donation includes a deemed donation as contemplated in section 58 of the Income Tax Act, 1962.
3. For the purposes of section 4(2)(a) of the Act, the reference to any foreign asset of a discretionary trust which was acquired by way of a donation made by the donor contemplated in that section, includes any asset of the discretionary trust the value of which is wholly or partly derived from any donation made by the donor.
4. Where a person has made an election in terms of section 4(1) of the Act in relation to a foreign asset of a discretionary trust, that person must, for purposes of the determination of any income or any capital gain or capital loss from the disposal of that foreign asset, be deemed-
- (a) to have acquired that foreign asset for an amount equal to the sum of the market value of that asset as at 1 March 2002 and any subsequent expenditure incurred by that discretionary trust in respect of that foreign asset;
  - (b) to deal with that foreign asset in the same manner as is dealt with by that discretionary trust from 28 February 2003; and
  - (c) to hold that foreign asset in terms of section 4(1) until the earlier date of either when-
    - (i) that foreign asset is disposed of by that discretionary trust;

- (ii) that person dies or ceases to be a resident of the Republic; or
- (iii) in the case of a deceased estate, close corporation or trust, that person ceases to exist by operation of law.

5. Any election by a person in terms of section 4(1) of the Act, is deemed for purposes of section 4(2)(c) of the Act to have been made by that person on 28 February 2003.

6. Where a person is in terms of section 4(1) of the Act deemed to hold any foreign asset of a discretionary trust, which was acquired by that discretionary trust by way of a donation made by that person after the date that the asset was accumulated as or converted to a foreign asset, that donation must, for purposes of section 17(1)(b) of the Act, be deemed to have been made before the date of that accumulation or conversion.

7. For the purposes of section 4(3)(b) of the Act-

(a) sections 7(5), 7(8) and 25B of the Income Tax Act, 1962, and paragraphs 70, 72 and 80 of the Eighth Schedule to the Income Tax Act, 1962, do not apply in respect of-

(i) any income received or accrued or expenditure incurred by a trust relating to a foreign asset; or

(ii) any capital gain determined by a trust in respect of the disposal of a foreign asset,

during the period that the foreign asset is deemed to be held by the donor in terms of section 4(1) of the Act; and

(b) any income received or accrued or expenditure incurred by a trust before 1 March 2002 in respect of a foreign asset is deemed to have been received or accrued or incurred, as the case may be, during the period that the foreign asset is so deemed to be held by that person.

## 8. Provisions relating to deceased estates

The provisions of section 17(1) of the Act shall apply in respect of any amount accumulated as or converted to a foreign asset as disclosed by the applicant in terms of section 6(3), which was not declared to the Commissioner in terms of the Estate Duty Act, 1955, notwithstanding the fact that the estate duty thereon could have been imposed only after the date of that accumulation or conversion.

## 9. Provisions relating to facilitators

A company, trust or deceased estate will be a related party if it complied with the requirements of the definition of "related party" in section 1 of the Act, on the date of accumulating foreign assets or transferring funds or assets from the Republic as contemplated in section 3(1)(c) of the Act.

- 10.** A company shall be deemed to comply with the provisions of paragraph (a) of the definition of "related party" in section 1, where all the shares of that company were directly or indirectly held on the date of accumulation or conversion by one or more trusts of which no person other than an applicant or relatives of that applicant were vested beneficiaries on that date.

- 11.** Where -

- (a) a company assisted more than one person by accumulating foreign assets or transferring funds or assets from the Republic, as contemplated in section 3(1)(c) of the Act; and
- (b) all those persons so assisted are applicants as contemplated in section 3(1)(a),

those applicants shall be regarded as one applicant for purposes of the definition of "related party" in section 1.

**12. Payment of exchange control amnesty levy**

For purposes of sections 12(1)(a) and 13(1)(a) of the Act-

- (a) where a person in anticipation of the exchange control relief in terms of the amnesty, repatriated any amount to the Republic on or after 28 February 2003 but before the date of approval, that amount must be deemed to have been repatriated by that person on the date of approval; and
- (b) the amount of the exchange control amnesty levy which is payable in respect of any amount repatriated by a person as contemplated in paragraph (a), must be converted into Rand by using the ruling spot exchange rate on the date of actual repatriation by that person before the date of approval.

**13. Foreign source income**

For purposes of sections 6(2), 9(2) and 15 of the Act, the reference to receipts or accruals from a source outside the Republic means all amounts where the actual source thereof is outside the Republic, regardless of the fact that the receipts or accruals may in terms of the Income Tax Act, 1962, have been deemed to be from a source within the Republic.

**14. Provisions relating to domestic tax relief**

For purposes of section 6(3)(b) and (c) of the Act, an applicant only needs disclose the year of assessment during which the amounts initially accumulated as or converted to foreign assets were so accumulated or converted.

15. For purposes of section 16(1) of the Act, the exchange rate as published by the South African Reserve Bank for the date of accumulation or conversion, means the daily exchange rate or the annual average exchange rate as published by the Reserve Bank.
16. The provisions of section 16 of the Act shall not be construed to impose the domestic tax amnesty levy more than once on any amount disclosed by the applicant or facilitator in terms of section 6(3), notwithstanding the fact that the applicant or facilitator, as the case may be, was required to declare that amount to the Commissioner under more than one provision of the Income Tax Act, 1962, or under both the Income Tax Act, 1962, and the Estate Duty Act, 1955.

**17. Provisions relating to unlawful activities**

For the purposes of section 6(4),8(b), 10(1)(c) and 20(1)(b) of the Act, an amount not disclosed in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), does not constitute proceeds of unlawful activities where that non-disclosure related to any zero-rated supply of goods or services.

18. The provisions of section 20(1)(b) of the Act apply only in respect of foreign assets or foreign bearer instruments held by the applicant on 28 February 2003.

**19. Procedures of Amnesty Unit**

For purposes of evaluating all applications and granting or denying approval thereof in terms of Chapter I of the Act, the Chairperson may determine the procedures to be followed in the meetings of the Amnesty Unit.

20. The Chairperson of the Amnesty Unit may fix the quorum which is required for a decision by the Amnesty Unit to grant or deny approval for amnesty.