IMPLICATIONS OF THE SMALL BUSINESS TAX AMNESTY ON ACCOUNTING, AUDITING, LEGISLATION AND ETHICS

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Introduction

Numerous small businesses are not registered with the South African Revenue Services (SARS) or have not made full disclosure of their tax affairs to SARS in the past and would now like to comply without the consequence of tax liabilities arising as a result of previous non-compliance. In recognition of this, the Minister of Finance announced the introduction of tax amnesty for small businesses in his 2006 Budget Speech.

On 25 July 2006 the Amnesty legislation was promulgated, with the Small Business Tax Amnesty and Amendment of Taxation Laws Act, No. 9 of 2006, (the Amnesty Act) containing the main provisions.

The Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, No. 10 of 2006, (the Second Amnesty Act) provided further clarity on the administrative provisions. This Act indicates that the purpose and objectives of the amnesty are to:

- broaden the SARS tax base;
- facilitate the normalisation of the tax affairs of small businesses;
- increase and improve the tax compliance culture; and
- facilitate participation in the taxi recapitalisation programme.

All references to the Amnesty Act in this circular specifically relate to Chapter 1 of this Act. Chapter 2 of the Act and its Schedules relate to amendments to other taxation laws.

The objective of this circular is to provide guidance on some of the pertinent accounting, auditing, ethical and other issues that preparers and auditors of financial statements of incorporated small businesses have to consider and address with regard to, and as a result of application for, the amnesty for small businesses.

This circular addresses the accounting treatment required for entities that comply with South African Statements of Generally Accepted Accounting Practice (GAAP). The same principles apply if entities
prepare financial statements in terms of International Financial Reporting Standards.

General knowledge of the Amnesty Act, and its requirements and implications, is assumed. Only the sections of the Amnesty Act that directly affect the identified issues at hand are quoted in this circular. The Explanatory Memorandum on the Small Business Tax Amnesty and Amendment of Taxation Laws Bill, 2006 (Explanatory Memorandum) issued by SARS provides clarity on the tax issues and this has also been addressed in Integritax, Item 1430, issued in August 2006.

Types of applicants
There are mainly two types of small businesses that would apply for amnesty, based on their history and level of compliance with tax legislation and Statements of GAAP. These types of small businesses are:

- small businesses that have never registered with SARS and that, in all likelihood, have not prepared financial statements annually in compliance with the Statements of GAAP. Such companies would possibly expect blanket amnesty; and

- small businesses that are already registered with SARS and are also likely to have been preparing annual financial statements in compliance with the Statements of GAAP or IFRS. In such cases, amnesty is sought for omissions and/or errors in previous declarations to SARS.

Tax Background in terms of the Amnesty Act
For purposes of the amnesty, the 2006 year of assessment is defined as “the year of assessment ending during the 12 month period commencing 1 April 2005 and ending 31 March 2006.”

In terms of section 5(1) of the Amnesty Act, SARS must approve applications for tax amnesty, provided that the applicant:

- qualifies for amnesty under section 2 of the Amnesty Act;
• has submitted an application to SARS between 1 August 2006 and the deadline date of 31 May 2007, in the manner and form prescribed by SARS, as per section 3 of the Amnesty Act; and

• has disclosed/furnished/provided all the required information as per section 4 of the Amnesty Act. This includes a statement of assets and liabilities and the income tax return for the 2006 year of assessment.

.11 SARS is however, prohibited, in terms of section 5(2) of the Amnesty Act, from approving amnesty for any applicant who at any time before the submission of the application for amnesty had received delivery of a notice of an audit, investigation or other enforcement in relation to non-compliance with any of the taxes to which the amnesty applies, unless the notice has been withdrawn or the audit or investigation has been concluded.

.12 The Amnesty Act provides relief from payment of the following taxes, contributions and levies:

• Income tax.
• Secondary tax on companies (STC).
• Value-added tax (VAT).
• Employees’ taxes.
• Withholding tax on royalties.
• Unemployment Insurance Fund contributions.
• The skills development levy.

.13 In accordance with the definition of “qualifying period” and subject to approval for amnesty, the applicant will be relieved from having to pay any income tax and STC for periods preceding the 2006 year of assessment. In relation to withholding tax on royalties and any other tax, levy or contribution, the qualifying period is the period/month ending on or before 28 February 2006.
An applicant whose application has been approved for amnesty must pay the amnesty levy on the basis of the taxable income of the 2006 year of assessment, but excluding assessed losses and assessed capital losses that would otherwise have been carried forward. The tax liability arising for the 2006 year of assessment will comprise the normal tax on taxable income for that year and the amnesty levy calculated at a rate between 0% and 5% depending on the taxable income for that year. There is no amnesty levy payable on taxes, contributions and levies other than income tax.

Successful applicants will also obtain relief for any additional tax, interest or penalties that relate to any of the amounts for which amnesty has been approved, as stipulated in section 9(1) of the Amnesty Act.

In terms of section 10 of the Amnesty Act, relief does not apply to any amount of taxes, levies, contributions, interest, penalties, or additional tax to the extent that the amount:

- had already been paid before the submission of the application for amnesty; or
- is payable or became payable because of information in any return or declaration that was furnished before the submission of the application for amnesty (unless the waiver in terms of section 13 of the Amnesty Act is applicable); or
- is payable in terms of an assessment that was issued before submission of the application (unless the waiver in terms of section 13 of the Amnesty Act is applicable); or
- relates to input tax claimed where no supply was made to the vendor or a taxable supply was shown as a zero-rated supply.

Section 11 of the Amnesty Act deals with amounts that are disallowed as deductions, allowances and losses in determining the applicant’s income tax liability, STC liability and VAT after the qualifying period in cases where the amnesty is approved.

If any of the conditions stipulated in section 12 of the Amnesty Act prevail, the amnesty that was approved will be void.
Accounting Implications and Treatment in compliance with the Statements of Generally Accepted Accounting Practice (GAAP)

Reference is made to the following accounting standards in addressing the applicable accounting treatment:

- IAS 1(AC 101) – Presentation of Financial Statements
- IAS 8(AC 103) – Accounting Policies, Changes in Accounting Estimates and Errors.
- IAS 10(AC 107) – Events after the Balance Sheet Date.
- IAS 12(AC 102) – Income taxes.
- IAS 37(AC 130) – Provisions, Contingent Liabilities and Contingent Assets (while income taxes are scoped out of paragraph 5 of IAS 37(AC 130), this standard is referred to by analogy as IAS 12(AC 102) only briefly relates to the small business tax amnesty).
- AC 502 – Substantively Enacted Tax Laws and Tax Rates.

Accounting treatment for income tax and STC

A liability is defined in the Framework for the Preparation and Presentation of Financial Statements as “a present obligation of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits”.

As defined, a liability to pay taxes to SARS exists for all entities that are required, in terms of legislation, to be registered with SARS.

A present legal obligation to pay taxes to SARS arises as a result of the company earning taxable income, paying dividends and collecting various taxes and levies on behalf of SARS. (The treatment of taxes and levies collected on behalf of SARS is discussed later in this circular).

The determining factor for the treatment of the tax liability in the financial statements of an applicant company is whether or not the
financial period for which the financial statements are being prepared falls before or after the date on which the Amnesty Act was regarded as being substantively enacted.

In terms of paragraph 46 of IAS 12(AC 102), “Current tax liabilities (assets) for the current and prior periods shall be measured at the amount expected to be paid to (recovered from) the taxation authorities, using the tax rates (and tax laws) that have been enacted or substantively enacted by the balance sheet date”.

Tax rates which arise as a result of a change in tax laws, and in this case the introduction of a new tax law, are regarded as being substantively enacted when they have been approved by Parliament and signed by the President. This is in accordance with the consensus of AC 502 in paragraph 5.

As the Amnesty Act was promulgated on 25 July 2006, this is the date from which the Act is regarded as having been substantively enacted. The treatment of the tax liability will therefore depend on whether the balance sheet date falls before or after the promulgation date.

**Financial periods preceding the date of substantive enactment of the Amnesty Act**

In the financial statements for financial years ending before 25 July 2006, the tax liability should be recognised and measured in full and in accordance with the tax rates that applied in the respective financial year. The Amnesty Act will have no impact on these financial statements regardless of whether they were prepared before or after promulgation of this Act, based on AC 502.

These tax consequences may have included penalties and fines for non-compliance with tax legislation requirements.

For small businesses that had been preparing annual financial statements, regardless of whether they are registered with SARS, the promulgation of the Amnesty Act may result in the identification of tax liabilities that were not previously recognised because of understatement or non-declaration in prior-period financial statements.
Such amounts should be treated as error in terms of paragraphs 41 – 49 of IAS 8(AC 103). The restatement of the error should be retrospective and will have an effect on the comparative figures and opening retained income. Where financial statements are corrected, paragraphs 44 and 45 of IAS 1(AC 101) should be considered when it is impracticable to determine the full effect of prior-period errors. If financial statements were not previously prepared, then when financial statements are prepared they should reflect the liabilities in the years in which they arose.

.28 In terms of IAS 1(AC 101), paragraph 36, comparative information must be disclosed for all amounts reported in the financial statements, unless the company is in its first year of incorporation. Failure to comply with this requirement would result in non-compliance with the Statements of GAAP and would therefore be a contravention of the Companies Act, 1973. If the Amnesty Act was promulgated after the company’s year end, but before the financial statements were approved, then the likely future relief from the various taxes, contributions and levies can be treated as a non-adjusting event after the balance sheet date in terms of IAS 10(AC 107), providing that all the requirements for relief, as noted below, are met.

Financial period in which the date of substantive enactment of the Amnesty Act falls

Treatment after submission of application, but before amnesty is approved

.29 To determine the appropriate measurement of the tax liability, the submission of an application for the small business tax amnesty requires the management of an applicant company to assess the probability of receiving approval of the amnesty in terms of section 5(1) of the Amnesty Act.

.30 The tax liability must be calculated by applying the corporate tax rate (currently 29% or other applicable rate in the case of a small business corporation) to the taxable income for the 2006 year of assessment. In addition, the company may have a liability in respect of the amnesty levy calculated in terms of section 6 of the Amnesty Act in the event
that the amnesty is approved. Should the application be unsuccessful, the liability would be another amount as assessed by SARS.

Paragraph 36 of IAS 37(AC 130) states that “the amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the balance sheet date”.

In making the best estimate, paragraph 42 of IAS 37(AC 130) implies that, in the absence of specific guidance given in IAS 12(AC 102), the risks and uncertainties that inevitably surround the events and circumstances should be taken into account.

By analogy, the risks and uncertainties in the small business tax amnesty pertain to:

- whether the small business is eligible for application in terms of sections 2 and 3 of the Amnesty Act;
- whether section 4 of the Amnesty Act has been met in relation to the submission of the information required for application;
- whether the entity has the intention and ability to settle the tax amnesty levy within 12 months of the approval date;
- provided that full and accurate disclosure or estimations have been made in all information in the application to ensure that approval is not rendered void in terms of section 12 of the Amnesty Act.

Management’s assessment of the probability of receiving amnesty should therefore be to determine whether the outflows resulting from the legal obligations to SARS for the 2006 year of assessment are expected to be measured on the basis of the applicable rate of prevailing tax legislation excluding the provisions of the Amnesty Act, or on the basis of the Amnesty Act.

When it is expected that amnesty will be approved

On the basis of the expectation of approval of the application for amnesty and the requirements of the standards, as quoted above, the tax amnesty levy is payable and is measured by multiplying the small business’s taxable income in the 2006 year of assessment by the
Amnesty Act’s sliding scale rate of 0% to 5%. In addition, the income tax liability for the 2006 year of assessment must be recognised by applying the prevailing corporate tax rate (29% or other applicable rate in the case of a small business corporation) to taxable income.

.36 In addition to recognising the amnesty levy, if management expects that amnesty will be approved it should:

- derecognise the balances of taxes for which relief is expected as indicated in section 8 of the Amnesty Act as the obligation to settle is extinguished;
- derecognise any additional taxes, penalties or interest that may have already been recognised but not yet paid, in relation to the liabilities for which relief is expected to be obtained;
- reassess or recognise any previously unrecognised taxes, levies, penalties or interest for which relief is not expected to be received as determined in terms of section 10 of the Amnesty Act.

.37 To derecognise existing tax liabilities for the periods preceding the 2006 year of assessment that are ‘extinguishable’ on approval of the amnesty, the tax line of the income statement is affected to the extent that it was affected at the time of recognition of the liability. It is possible that a gain may arise in this regard, similar to instances of reversing a prior overprovision for tax expenses. Disclosure of the details of such overprovision for the benefit of users is therefore important.

When reliable estimates cannot be made or it is not expected that amnesty will be approved

.38 When management cannot make a reliable estimate of the probability of obtaining approval of the application for the amnesty or extent of the amnesty, and/or the amnesty is not expected to be granted, the income tax liability is measured by applying the prevailing corporate tax rate (currently 29% or other applicable rate in the case of a small business corporation) to taxable income. Other taxes for which an obligation exists should also be recognised in this case, as per the requirements and rates of the applicable legislation.
Financial periods subsequent to the substantive enactment of the Amnesty Act
In subsequent financial periods the small business will revert to applying the tax principles, tax rates and levies to which it is subject that prevail in terms of the tax legislation at that time.

In the absence of specific guidance given in IAS 12(AC 102), paragraph 59 of IAS 37(AC 130) states that “provisions shall be reviewed at each balance sheet date and adjusted to reflect current best estimate. If it is no longer probable that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision shall be reversed.”

Management should therefore review provisions made in the preceding financial period on the basis of the latest indication of the expected tax consequence such as the notice/assessment received from SARS.

Delivery of notice by SARS of decision to approve or deny amnesty
The outcome of the amnesty application is confirmed by notice delivered by SARS to the applicant.

An “adjusting event after balance sheet date” is defined in IAS 10(AC 107) as an event that provides evidence of conditions that arose after the balance sheet date.

The delivery of the notice of approval or denial of amnesty is an adjusting event after balance sheet date, provided that the financial statements of the amnesty applicant have not been finalised by that delivery date.

To the extent that SARS has finalised the company’s assessment and application, the financial statements should be adjusted for any differences between management’s estimate and the SARS assessment.

In the event that amnesty is denied, any previous adjustments to reduce the tax liability in anticipation of the amnesty should be reversed, and the prevailing rate applied.
Settlement of the amnesty levy

.47 The amnesty levy should be settled within 12 months after the date on which the notice of approval was delivered, or a longer period under conditions allowed by SARS, as indicated in section 7 of the Amnesty Act. Failure to do so will result in the approval of the amnesty being void in terms of section 12(a) of the Amnesty Act, and a reversal of the reduction in tax liability will once again be required.

Taxes and levies that are collected on behalf of SARS, e.g. VAT and PAYE

.48 Amounts received or deducted in relation to taxes and levies collected on behalf of SARS are not for the benefit of the company. The company’s obligation to pay these taxes over to SARS arises only when: the money is in the hands of the company, the company has made the necessary deduction, and the company has not deducted an amount when required, or has not paid over an amount to SARS that it has not received. When an application for amnesty is approved, the company will be relieved from having to pay such amounts in the applicable periods ending on or before 28 February 2006, should amnesty be approved.

.49 If management determines that amnesty approval is probable, the tax liability should be adjusted to reflect the best estimate expected to settle the obligation.

.50 For accounting purposes, this may result in the reversal of amounts that had been recorded or should have been recorded, but had not yet been paid over to SARS for the periods ending on or before 28 February 2006. This would have the effect of a gain in the income statement in the financial period that the adjustment is made.

Disclosure

.51 Disclosure of a separate note on the detailed description of the amnesty application (including management’s expected outcome) should be considered, as per paragraph 86 of IAS 1(AC 101), as it is likely to be considered material in nature and amount.
As indicated in IAS 12(AC 102), paragraph 81(d), an explanation of the changes in the applicable tax rates compared to the previous accounting period is required. The effect of the amnesty should also be reflected in the tax rate reconciliation.

Where there is significant risk of causing material adjustment to carrying amounts of an asset or liability within the next financial year, it is required, in terms of IAS 1(AC 101), paragraph 116, that the key assumptions and other key sources of estimation be disclosed in the notes, together with the details of the nature of the asset or liability and its carrying amount.

Disclosure in terms of IAS 10(AC 107) should also be included where applicable.

Management should consider including details of the effects of the other taxes, levies, penalties and applicable rate, etc. that would be payable should the decision on the amnesty application not be in favour of the company. This may be relevant and material information to the decisions of users of the financial statements, depending on the impracticability of compiling this information.

In addition to the accounting treatment and disclosure required, as highlighted in preceding paragraphs of this circular, disclosure of the amnesty application should also be made in the directors’ report, where such a report is required.

**Auditing Considerations and Requirements**

**Effect of the amnesty application on the audit**

The auditor should design and perform audit procedures of which the nature, timing and extent are responsive to the risks that are associated with the amnesty application.

The auditor should satisfy him/herself that the appropriate accounting treatment has been applied in relation to his/her client’s compliance with the Amnesty Act requirements and management’s assessment of the expected outcome.
.59 ISA 540 – Audit of accounting estimates, should be applied. Paragraph 10 states that “the auditor should adopt one or a combination of the following approaches in the audit of an accounting estimate:

- review and test the process used by management to develop the estimate;
- use an independent estimate for comparison with that prepared by management; or
- review of subsequent events which provide audit evidence of the reasonableness of the estimate made.”

.60 The auditor should consider the client’s application to be an indicator of non-compliance with tax legislation, both in current and in previous financial periods. In terms of ISA 250 – Consideration of laws and regulation in an audit, the auditor should consider, on the basis of sufficient appropriate evidence:

- his/her involvement with the client;
- his/her planning and performance of the audit; and
- the effect on his/her audit opinion (paragraphs 35 to 37).

.61 The auditor is required to evaluate the nature, timing and extent of the possible effects of the application, such as the effect on the financial position after the adjustment of the tax liability, and the effect on the liquidity of the entity.

Effect of the amnesty application on the auditor’s opinion

.62 The auditor should apply his/her professional judgement, based on sufficient appropriate audit evidence presented, to ascertain whether he/she should issue a modified report. This depends on the materiality and pervasiveness of the effect on the financial statements.

.63 In terms of ISA 701 paragraph 7, “the auditor should consider modifying the auditor's report by adding a paragraph if there is significant uncertainty (other than a going concern), the resolution of
which is dependent upon future events and which may affect the financial statements”.

“A qualified opinion should be expressed when the auditor concludes that an unqualified opinion cannot be expressed but that the effect of any disagreement with management or limitation of scope is not so material and pervasive as to require an adverse opinion or disclaimer of opinion,” in accordance with paragraph 12 of ISA 701.

“A disclaimer of opinion should be expressed when the possible effect of a limitation of scope is so material and pervasive as that the auditor has not been able to obtain sufficient appropriate evidence and accordingly is unable to express an opinion on the financial statements,” in accordance with paragraph 13 of ISA 701.

“An adverse opinion should be expressed when the effect of a disagreement with management is so material and pervasive to the financial statement that the auditor concludes that a qualification of the report is not adequate to disclose the misleading or incomplete nature of the financial statements,” in accordance with paragraph 14 of ISA 701.

If the auditor is satisfied that the accounting treatment and disclosure pertaining to the amnesty application are fairly presented in the financial statements, he/she should insert an emphasis of matter paragraph in the audit report, in terms of paragraph 7 of ISA 701.

The auditor should issue a qualified opinion when the treatment of the amnesty application is not in compliance with the requirements of Statements of GAAP, but the effect of the disagreement with the treatment is not so material and pervasive as to require an adverse opinion or a disclaimer.

Should the auditor be of the opinion that there is a limitation of scope that is material and pervasive to the extent that he/she is unable to express an opinion on the financial statements, he/she should issue a disclaimer of opinion, as indicated in paragraph 13 of ISA 701. This
would be the case, for example, if a company were unable to present evidence for opening balances.

.70 If the auditor disagrees with the manner in which management has treated the amnesty application in its financial statements, and such disagreement is so material and pervasive to the financial statements as to require an adverse opinion, the auditor should express such an opinion in compliance with paragraph 14 of ISA 701. This would be, for example, where the auditor and management disagreed as to the probability of amnesty approval, and the accounting treatment of the application was incorrect.

**Treatment in financial statements that were not audited in previous years**

.71 The auditor should apply the principles outlined in ISA 510 – *Initial engagements – opening balances*. Sufficient appropriate evidence should be obtained that:

- the opening balances do not contain material misstatements;
- prior-period closing balances have been appropriately brought forward; and
- appropriate accounting policies are consistently applied and adequately presented and disclosed.

.72 Where opening balances are found to be materially misstated, the auditor should request management to restate them. Should management refuse to do so, an appropriate modification is required.

.73 If the auditor is not satisfied with a restatement of a misstatement, he/she should express a qualified opinion or an adverse opinion, as appropriate.

**Separate engagement**

.74 In general the audit engagement would not include work for an amnesty application. It is recommended that a request for assistance/advice for an amnesty application be treated as a separate engagement, and that
therefore a separate engagement letter be signed. This is in support of section 2A(2), as referred to in paragraph 78 in this circular.

An example of an engagement letter is included as an appendix.

**Reportable Irregularities Consideration**

The Revenue Laws Second Amendment Act, No. 21 of 2006, gazetted on 7 February 2007, inserted section 2A into the Second Amnesty Act. This section relates to the exemption of registered auditors from their duty to report irregularities in terms of section 45 of the Auditing Profession Act, No. 26 of 2005 (APA).

When the auditor has been appointed/engaged to assist or advise a small business in connection with an application or prospective application for amnesty in terms of the Amnesty Act, he/she is exempted from the reporting responsibilities of section 45 of the APA, relating to reportable irregularities.

This exemption is applicable only to laws administered by the Commissioner of SARS that may come to the auditor’s attention in the course of providing that assistance or advice.

Section 2A(2) of the Second Amnesty Act requires the auditor to have written proof of appointment for the engagement to assist in the amnesty application in order to qualify for this exemption. The exemption is deemed to be applicable from 1 August 2006.

Non-compliance with any law other than those administered by the Commissioner of SARS, such as the Companies Act requirement to prepare financial statements in compliance with the Statements of GAAP and to appoint an auditor, falls outside the scope of this exemption.

The auditor is required to test non-compliance which falls outside the scope of the amnesty legislation against the criteria for reportable irregularities in terms of section 45 of the APA, and to fulfil his/her responsibilities in this regard. Further guidance relating to reportable irregularities can be found in *Reportable Irregularities: A Guide for...*
Registered Auditors, which was issued by the Independent Regulatory Board for Auditors (IRBA) in June 2006.

Legislation Considerations

Financial Intelligence Centre Act (FICA) consideration

.81 In terms of FICA, a person who carries on a business, is in charge of or manages a business, or is employed by a business has a duty to report a suspicious transaction to the Financial Intelligence Centre, where that business is a party to a transaction that may involve an investigation of tax evasion or evasion of any other duty or levy imposed by SARS.

.82 The Minister of Finance issued an exemption from the reporting obligations under section 29(1)(b)(iv) of FICA, applicable for the amnesty period 1 August 2006 to 31 May 2007.

.83 Auditors, tax advisers, accountants, etc. who are assisting or advising clients with an amnesty application will not be required to report suspicious or unusual transactions in respect of the information disclosed to them by their clients.

.84 The exemption relieves persons such as tax practitioners, accountants and auditors from having to report suspicious transactions and information disclosed for the purpose of obtaining advice or assistance in connection with the application or prospective application for amnesty referred to above, whether such an application is in fact made by or on behalf of the client or not.

Companies Act reporting requirements

.85 Notwithstanding that SARS requires a statement of assets and liabilities for the 2006 year of assessment as part of the application for amnesty, companies must prepare a full set of financial statements for all financial years in accordance with the requirements of section 286 of the Companies Act, and, hence, in compliance with Statements of GAAP, as per the 4th Schedule of the Companies Act. In addition SARS reserves the right to call for an applicant’s audited annual financial statements.
In terms of section 300 of the Companies Act, the auditor is required to fulfil his/her duty to report on those financial statements annually. In addition, the auditor is required to comply with the APA and with the SAICA/IRBA Code of Professional Conduct (the Code).

Second Amnesty Act, section 5 – relief from prosecution for related offences
Applicants for the tax amnesty whose application is approved in terms of section 5 of the (first) Amnesty Act and persons who acted in representative capacity for applicants during the qualifying period are deemed not to have committed any offences in terms of any acts (i.e. laws) to which amnesty application relates, and to the extent that section 8 of the Amnesty Act is applicable.

Therefore, the small business tax amnesty relates to non-compliance with tax legislation only and does not provide blanket amnesty for non-compliance with other legislation. Exemptions from the other specified Acts (FICA and APA) are also limited to the extent that they relate to amnesty application.

Income Tax Act – objections and appeal
In terms of section 6 of the Second Amnesty Act, Part III Chapter III of the Income Tax Act will be applicable for any objections and appeals against decisions of SARS in relation to amnesty application.

Ethical Considerations
Reputation risk
When considering whether to accept a new engagement or when deciding whether to continue an existing engagement, the auditor is required to obtain such information as is considered necessary to give reasonable assurance that the auditor undertakes and maintains client relationships that do not impact negatively on the reputation of the auditor. As part of this decision making, the integrity of the client should be considered.

When a client approaches the auditor for assistance in applying for the small business tax amnesty, the auditor may be presented with
information that poses a question about the integrity of the prospective/existing client.

New clients

92 In the case of a new client, it is unlikely that there will be a negative impact on the reputation of the auditor as the auditor will not have been implicated in any past transgressions of the new client. In fact, the auditor’s reputation may be enhanced for his/her being seen to be assisting small business owners to improve their compliance with legislation and assisting SARS to meet its objectives for the amnesty.

93 Acceptance of such an engagement is not considered to be unethical.

Existing clients

94 The reputation of the auditor may be at risk when an existing client identifies the need to apply for the amnesty. Application implies that such a client has previously not complied with tax legislation. This, in turn, implies that the client either concealed the non-compliance with tax legislation from the auditor, or that the auditor was aware or should have been aware of the non-compliance, but failed to take any steps to ensure compliance.

95 Section 410, paragraph 10 of the Code provides guidance in this regard. In terms of this section, the auditor is required to consider the professional and legal responsibilities applicable in such circumstances, including his/her continued involvement with the client. The auditor may still, however, wish to consider involvement with clients who have not complied with tax legislation in the past.

Confidentiality requirements

96 In terms of section 140 of the Code, confidentiality requirements in general prevent the auditor from disclosing information of the client to third parties, unless:

- with the prior consent of the client; or
- by requirement of the law.
By appointing/engaging the auditor to assist with its application for amnesty, the client gives tacit authority to the auditor to disclose appropriate information to the relevant authorities, in this case SARS, and only to those authorities.

Johannesburg                    I S Schoole
May 2007                        Executive President
Appendix – Example of an Engagement Letter

[DATE]

[The directors/The management/The members/The trustees]
[Name of client]
[Address]

ENGAGEMENT LETTER: TAX AMNESTY APPLICATION

We are pleased to confirm our acceptance of our engagement in respect of taxation services regarding the Small Business Tax Amnesty. This letter sets forth our understanding of the terms and objectives of our engagement and the nature and scope of the services we will provide.

Taxation service
Our responsibility is to assist and advise you in connection with the application of the amnesty in terms of the Small Business Tax Amnesty and Amendment of Taxation Laws Act (Act 9 of 2006) and Second Small Business Tax Amnesty and Amendment of Taxation Laws Act (Act 10 of 2006).

Responsibility of the applicant
We confirm that it is your responsibility to provide us with complete, reliable, accurate and timeous information to enable us to complete the amnesty application form. The applicant is responsible for the preparation of information for the completion of the amnesty application form in terms of the acts referred to above.

The approval of the amnesty application is dependent on compliance with the amnesty legislation and regulations, and we cannot be held responsible for the consequences of your omitting or not disclosing information or facts, or for any adverse consequences arising from the said application, or for the amnesty not being granted.

Fees
Our fees are based on the time required by the individuals assigned to the engagement, taking cognisance of the knowledge and skill required,
including disbursements. Individual hourly rates vary according to the degree of responsibility involved and the level of experience and skill required. Settlement of our fees is due on presentation of our invoices.

**Agreement of terms**

Once it has been agreed on, this letter will remain effective until it is replaced.

We look forward to full cooperation with your staff and we trust that they will make available to us any records, documentation and other information requested in connection with our services.

Please sign and return the attached copy of this letter to confirm your agreement and understanding of the terms of our engagement.

Yours faithfully

Chartered Accountant (South Africa)

I, the undersigned, being duly authorised to sign for or on behalf of [name of client], herewith accept the above terms of the engagement.

<table>
<thead>
<tr>
<th>NAME</th>
<th>CAPACITY</th>
<th>SIGNATURE</th>
<th>DATE</th>
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