



Amnesty

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## Explanatory Note Re – UNF Government's "Tax" Amnesty

1. The infamous "Tax" Amnesty was craftily introduced as a Law under the guise of the name – "Inland Revenue (Special Provisions) Act No. 10 of 2003". Therefore, in view of such name, it misled everyone to believe that this was an "Income Tax Amnesty" given under the Inland Revenue Act No. 38 of 2000. Like a "Wolf in Sheep's clothing" this purported "Tax" Amnesty law had a Schedule of several other Laws pertaining to matters other than Income Tax, including the following Laws:
  - The Customs Ordinance (Chapter 235).
  - The Exchange Control Act, (Chapter 423).
  - The Import and Export Control Act, No. 1 of 1969.
  - The Excise (Special Provisions) Act, No. 13 of 1989.
  - The Excise Ordinance (Chapter 52).
2. The above Laws are enforced not by the Commissioner General of Inland Revenue, but by the Controller of Exchange, Controller of Imports and Exports, Director General of Excise and the Director General of Customs.
3. But under the infamous Tax Amnesty Law "Declarations" had to be made only to the Commissioner General of Inland Revenue, who gave a "Receipt" as an acknowledgement of a Declaration, and the other State Authorities were expected to act purely on the production of such "Receipt". That is, on the production of such "Receipt", the other State Authorities were required to grant immunity, indemnity and pardon for Offences committed under the above Laws enforced by them. This had no meaning at all, nor any nexus
4. No "Taxes" are charged under any of the above Laws. In fact, the above Laws prohibit certain Offences to enforce the Rule of Law and to ensure the proper conduct of society. Some of the Offences under the above Laws would include the following, including criminal Offences punishable under the Penal Code:
  - Smuggling, including smuggling of restricted / prohibited items, such as drugs and narcotics, firearms and security sensitive equipments.
  - violations of the provisions of the Intellectual Property Act enacted to protect consumer interests, inter-alia, preventing unlawful/spurious products and/or imitations in the market
  - distilling of illicit brew of liquor such as Kasippu, etc and bootlegging,
  - dealing in narcotics, cannabis, opium and cultivating of ganja
  - Import and/or export of items prohibited in the national or public interest
  - Exchange Control violations detrimental to the national economy
  - Money laundering in connection with narcotics, drug peddling, human trafficking and terrorism banned under international conventions / treaties entered into by Sri Lanka.
5. Some of the above Offences are non-bailable Offences and punishable with fines and imprisonment. Such offences have nothing to do with the word "Tax".
6. In fact, under the Customs Ordinance, several other Laws are enforced by the Custom Department. Some of these Laws enforced by the Customs, include the following:
  - Explosives Act
  - Firearms Ordinance
  - Obscene Publications Ordinance
  - Poison, Opium and Dangerous Drugs Ordinance
  - Food Control Act

7. Immunity and indemnity from all investigations and prosecutions and an Amnesty had been granted for all Offences under all the above Laws by fraudulently defining the word "Tax" to include "any tax, levy, penalty (including any penalty in respect of any offence) forfeiture or fine, payable or levied under any of the Laws referred to in the Schedule, included in the infamous Income Tax Amnesty Law of the UNF Government i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003.
8. Therefore, those who have committed Offences, including smuggling of drugs, firearms, counterfeit currency, funding terrorism / terrorist activities, distilling Kassippu, etc., have been given a complete immunity, indemnity and pardon under the guise of an "Income Tax Amnesty".
9. As per Section 3 (3) of the infamous "Income Tax Amnesty Law" foreign exchange transactions and inward remittances after 31.3.2002 up to 31.8.2003 have been questionably deemed to have taken place prior to 31.3.2002, thereby having "opened the flood-gates" for terrorist funds to have secretly come into the country, after having enacted the Inland Revenue (Special Provisions) Act No. 10 of 2003 on 17.3.2003
10. In fact, as per Section 10 of the infamous "Tax" Amnesty Law, ample opportunity had been given for these Offences to be perpetrated even in the future, because if any prosecution is not completed for future offences within a period of 5-years, then no such prosecution for such Offences can be maintained or continued with, and such criminal charges have to be dropped by the State.
11. The above is against all norms in civilised society and is against the Rule of Law. But the UNF Government, not only granted pardon for such offenders (which only Her Excellency the President could grant as per Article 34 of the Constitution), but also encouraged the growth of such offenders and the perpetration of such frauds in the future, which would have led the country to be a "Banana Republic", with rampant smuggling, with gun running, with drug peddling, etc.
12. In addition to the above Laws that do not relate to "Income Tax" at all, the following Laws which relate to indirect taxes collected from the consumer public have also been Scheduled to the infamous Tax Amnesty Law, i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 to grant immunity and indemnity from investigation and prosecution and to grant pardon.
  - The Turnover Tax Act, No.69 of 1981.
  - The National Security Levy Act, No. 52 of 1991.
  - The Goods and Services Tax Act, No. 34 of 1996.
  - The Stamp Duty Act, No. 43 of 1982.
  - The Finance Act, No. 11 of 1963.
  - The Save the National Contribution Act, No. 5 of 1996.
13. Under the above Laws, Taxes and Levies are collected from the consumer public to be paid to the Government. Such collected Taxes and Levies belong to the government and cannot be kept back by those persons, who collected such Taxes and Levies from the consumer public. This would be fraudulent misappropriation of public funds to allow such persons to retain such monies collected from the consumer public, without paying such monies to the State.
14. In addition, the infamous Tax Amnesty Law i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 granted a peculiar Tax Amnesty to write-off Income Tax dues from Tax Payers already in the Books of Accounts of the Government. These are not "undisclosed" or "hidden incomes and/or assets". But these are incomes and/or assets discovered by the Department of Inland Revenue and assessed, and forms apart of public revenue. Under the guise of an Income Tax Amnesty these revenues due to the government have also been written-off.

15. An "Income Tax Amnesty" is granted only to persons, who had not disclosed their incomes or assets, and therefore such incomes or assets could not have been known to the Inland Revenue Department and thus could not have been assessed. To disclose such hitherto undisclosed incomes or assets is an Income Tax Amnesty.
16. None of the above, where criminal Offences are being pardoned, and public revenue in the Books of the Government are written-off, can be described as an "Income Tax Amnesty".
17. Indirect and direct Taxes collectable by the Government as at 31.12.2002 had amounted to Rs. 68.7 billion. Customs Duties defaulted to be collected is reckoned to have been Rs. 120 billion. Together with Fines imposed by the Controller of Exchange and the Excise Commissioner, the total dues or public revenue payable to the Government or recoverable by the Government as at 31.12.2002 was over Rs. 200 billion. This is not "undisclosed" income referred to above, which have been "declared secretly". That is a separate matter altogether. These are disclosed public revenues in the Books of Accounts of the Government.
18. Former Finance Minister K.N. Choksy told the public that the above public revenues collectable as recorded in the Books of Accounts of the Government cannot be collected. However, the relevant State Authorities i.e. the Commissioner General of Inland Revenue, Controller of Exchange, Director General of Excise, Director General Customs and the Auditor General did not confirm that such colossal sums of public revenue of Rs. 200 billion cannot be collected. Mr. Choksy having been unable to perform his duties, then should have resigned.
19. In fact, under the infamous Tax Amnesty Law considerable payments already made to these State Authorities have already been refunded by the State Authorities.
20. Today there is a shortage of funds in the Treasury because such a large amount of public revenue of Rs. 200 billion due to the Government had been written-off. Even if 10% is collected immediately, that would amount to Rs. 20 billion, with which immediate relief could be given to cushion the rising cost of living due to increases of oil prices, to help the poor masses of the country, grant fertiliser subsidies to farmers, and grant relief to those poor people affected by the severe drought now prevailing in the country.
21. Whilst writing-off Rs. 200 billion of public revenue by this infamous Tax Amnesty Law of 2003, the UNF Government budgeted to borrow Rs. 350 billion in the year 2004. Compare this write-off of Rs. 200 billion with the budgeted Capital Expenditure amounts for the year 2004 -

	Rs. Billion
- Education and Health	16.2
- Housing and Water Supply	14.0
- Lending to Small and Medium Enterprises	11.0
- Power and Energy	9.8
- Agriculture, Irrigation, Fisheries	9.0
- Un-employed Graduates	3.0
- Fertilised Subsidy	3.5
- Paddy Purchase Subsidy	0.9

22. The above is expenditure for 19 million people. Compare this with the Rs. 200 billion write-off granting bonanzas for a very few capitalist cronies, wrong-doers, law breakers, drug peddlers, terrorists and fraudsters, close friends of Ranil Wickramasinghe and his UNF Government.
23. The new Bill "Inland Revenue (Regulation of Amnesty)" presented to Parliament by the PA Government repeals the above infamous Tax Amnesty Law of the UNF Government completely, and grants only an "Income Tax Amnesty" to those Declarents, who had disclosed hitherto undisclosed incomes or assets, under the Inland Revenue Act No. 38 of 2000.

24. This also includes Declaiments, who had made Declarations during the 2-Month period 1.7.2003 to 31.8.2003, for which period there was no Law for receiving or acting upon Declarations, since the Law i.e. Act No. 31 of 2003, to extend to 31.8.2003, the closing date for the receipt of Declarations of 30.6.2003, was passed in Parliament only on 21.8.2003, and certified by the Speaker only on 22.10.2003, on which date it became a Law, with no retrospective effect to cover the 2-Months period 1.7.2003 to 31.8.2003; the legal validity of the Declarations during this period has already been challenged in Court.
25. Only 16,860 Declarations had been received up to 30.6.2003 and the balance 34,945 Declarations had been received during the 2-Months period 1.7.2003 to 31.8.2003. Those entitled to an "Income Tax Amnesty" is estimated to be only around 2000 persons, which figure will be known, when the Commissioner General of Inland Revenue forwards his Annual Report for 2004.
26. Her Excellency the President setting out the obnoxious and fraudulent features of the infamous Tax Amnesty Law i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 forwarded a Cabinet Memorandum on 10.7.2003 requiring such Law to be immediately suspended and thereafter repealed. However, the UNF Cabinet knowingly and deliberately continued to perpetrate this massive fraud on the public by extending the period to receive Declarations by a further 2-Months period.
27. Even the "Income Tax Amnesty" under the proposed new law of the PA Government will be granted, after the verification of the correctness of the Declarations by the Commissioner General of Inland Revenue or his Officials, to eliminate "fictitious" Declarations suspected to have been made under the infamous Income Tax Amnesty Law of the UNF Government, where the Commissioner General of Inland Revenue was required to accept as correct, without any question, the Declaration made by a Declaiment.
28. Another "heinous" provision in the infamous Income Tax Amnesty Law of the UNF Government was that, as per Section 3 of that Law, full immunity and indemnity from investigation or prosecution for any Offence under any Law Scheduled, in so far as it related to sources of income or assets declared, or the manner in which such assets were funded, were granted, notwithstanding anything to the contrary in any other Law i.e. including the Penal Code, as per Section 4 of that Law.
29. In other words, if the sources of incomes or assets were acquired after murdering a person or extorting money or through fraud or robbery or through any other criminal and illegal means, then full immunity and indemnity is granted from investigations and prosecutions for such illegal and criminal acts, thereby criminalising society.
30. Finally, under the absolute secrecy granted in terms of Section 6 of the infamous "Tax Amnesty Law" i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, no Commission of Inquiry or Regulator or Court of Law could call for the identity of the Declaiment or any information contained in any Declaration, except in Court Proceedings instituted for Bribery or Corruption. But to institute Court Proceedings investigators would need the details of the Declarations to establish a prima-facie Case. Therefore, even action on Bribery or Corruption has been prevented by this infamous Tax Amnesty Law of the UNF Government.
31. The Supreme Court in its Determination given on 23.8.2004 on the "Inland Revenue (Regulation of Amnesty) Bill" presented by the PA Government, referring to the infamous Income Tax Amnesty Law (i.e. Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003) of the UNF Government stated thus:

*"It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act, No. 10 of 2003, as amended, are inconsistent with Article 12(1) of the Constitution which guarantees to every person equal protection of the law; in that it grants; immunities and indemnities to persons who have contravened the laws that have been referred to and thereby defrauded public revenue causing extensive loss to the State"*

32. The infamous Income Tax Amnesty Law of the UNF Government i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 was prevented from being examined and determined upon by the Supreme Court for its constitutionality by the Attorney General objecting to such examination and Determination, on the premise that a citizen had challenged the Bill after the lapse of the period of 7-days stipulated in the Constitution to challenge a Bill. Upon such objection by the Attorney General, the Supreme Court declined to exercise its jurisdiction and thus a Supreme Court Determination on the constitutionality of the Inland Revenue (Special Provisions) Act No. 10 of 2003 was prevented.
33. Had such Supreme Court Bill challenge been duly filed within the 7-day period, then the Supreme Court Determination would have been similar to the Determination given above, i.e. that - *"the provisions of the Bill were inconsistent with the Constitution, and grants immunities and indemnities persons who have contravened the laws that had been referred to, and thereby defrauded public revenue causing extensive loss to the State"*.
34. In such above circumstances, Parliament could not have and would not have enacted the infamous Income Tax Amnesty Law i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 into law.
35. Now, in the Supreme Court Determination on the PA Government's Bill titled "Inland Revenue (Regulation of Amnesty) Bill", the Supreme Court referring to the infamous Tax Amnesty Law i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, had determined, *inter-alia*, that - *"the provisions of that law were inconsistent with the Constitution, and grants immunities and indemnities to persons who have contravened the laws that had been referred to, and thereby defrauded public revenue causing extensive loss to the State"*.
36. Therefore, it is the Constitutional duty of Parliament to repeal the infamous Income Tax Amnesty Law of the UNF Government i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended, respecting the Supreme Court Determination forward to Parliament on the PA Government's "Inland Revenue (Regulation of Amnesty) Bill" to repeal the infamous Income Tax Amnesty Law of the UNF Government. All Parliamentarians are bounden by Oaths / Affirmation to uphold and defend the Constitution and to enact laws [REDACTED] with the Constitution.
37. Any one who opposes the repeal of the infamous "Income Tax Amnesty Law" of the UNF Government i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, is not only violating the Constitution and acting disrespecting the Supreme Court Determination, but also is acting to criminalise society degrading social [REDACTED] values, and colluding in the defrauding of public revenue causing extensive loss to the State i.e. the poor people of this country.

15.9.2004

**UNCONSTITUTIONAL TAX AMNESTY DEFRAUDED PUBLIC REVENUE  
CAUSING EXTENSIVE LOSS TO THE STATE – SUPREME COURT**

The Supreme Court in its Determination made on August 23, 2004 on the “Inland Revenue (Regulation of Amnesty) Bill” to repeal the Inland Revenue (Special Provisions) Act No. 10 of 2003, amended by Act No. 31 of 2003, *inter-alia*, has stated thus, quoting from the pronouncement that a 5-Judge Bench of Supreme Court made on the Reference made by Her Excellency the President in terms of Article 129 of the Constitution:

*“The immunity granted in terms of the Inland Revenue (Special Provisions) Act, No.10 of 2003 is not restricted to persons who have not made declarations or had evaded paying tax under the Inland Revenue Act. Sections 2 and 3 of the said Act refers to the declarations that has to be made to the Commissioner general and the immunity granted to such persons, respectively under any law which is specified in the schedule to the Act. Sections 2 and 3 of the Act states that:*

*“Section 2-*

*Any person whether in Sri Lanka or abroad, who though required under any law for the time being in force, which is specified in the schedule hereto.....”*

*“Section 3-*

*Any person making a declaration in terms of Section 2, shall enjoy full immunity from liability to pay tax under any law specified in the schedule hereto.....”*

*The schedule to the Act includes the following Acts which could be considered as been pivotal to the country's revenue, public finance and fiscal control. They are*

- (a) The Customs Ordinance;*
- (b) The Excise Ordinance;*
- (c) The Turnover Tax Act*
- (d) The National Security Levy Act;*
- (e) The Goods and Services Tax Act;*
- (f) The Stamp Duty Act;*
- (g) The Finance Act;*
- (h) The Save the Nation Contribution Act;*
- (i) The Exchange Control Act;*
- (j) The Import and Export Control Act*

*Thus it is obvious that the immunity granted by the Inland Revenue (Special Provisions) Act, No.10 of 2003, although contained in a law that bears that title and includes time periods particularly applicable to Inland Revenue , is not restricted to Inland Revenue alone, but brings in a number of other important areas such as Customs, Excise and even the Goods and Services Tax, that have been in force at the time the said Act was enacted. Some of the laws such as Customs, it was submitted, attracts several other subject areas and therefore would include, matters such as Revenue Protection Act and the Air Navigation (Customs Regulations) Additionally, this has also included Value Added Tax, Exchange Control Act, Import and Export Control Act, Immigrants and Emigrants Ordinance, Board of Investment Act and the like.*

The effect of the aforesaid provisions is the creation of two segments of tax payers and persons within the country. One being the law abiding honest person who has diligently complied with laws relating to revenue, public finance and fiscal control and submitted the requisite declarations and returns and paid what is due. The other would be the person who has been evading tax for several years and who has not complied with the salutary requirements of laws relating to revenue, public finance and fiscal control and who would now benefit through the immunity granted by the Inland Revenue (Special Provisions) Act No.10- of 2003. Section 3 referred to above, grants 'full immunity from liability to pay tax under any law specified in the schedule hereto' and the immunity would be enjoyed from liability from any investigation or prosecution for any offence under any law specified in the schedule to the Act. Thus the Act has made clear provisions to create two categories and through such classification has favoured one category by allowing them to enjoy full immunity not only from liability to pay tax, but also from any investigation or prosecution. There again the immunity is not limited to the Inland Revenue act, but extends as referred to earlier, to a number of other subject areas.".....

***"It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act, No. 10 of 2003, as amended, are inconsistent with Article 12(1) of the Constitution which guarantees to every person equal protection of the law; in that it grants; immunities and indemnities to persons who have contravened the laws that have been referred to and thereby defrauded public revenue causing extensive loss to the State"(Emphasis added)***

Article 82 (6) of the Constitution stipulates that –

**"No provision in any law shall, or shall be deemed to, amend, repeal or replace the Constitution or any provisions thereof, or be so interpreted or construed, unless enacted in accordance with the requirements of the preceding provisions of this Article."**

and Article 84 (3) of the Constitution stipulates that –

**"Such a Bill when enacted into law, shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the Members present and voting"**

In addition, the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended, being determined to be inconsistent with the Constitution, the Supreme Court has determined that the said Law had defrauded public revenue causing extensive loss to the State.

In terms of Article 3, read with Article 4, of the Constitution, People have given a limited mandate to Parliament to enact laws, whilst reserving unto themselves the right to pass certain other Laws by the People, themselves, voting at a Referendum. Members of Parliament are bounden by Oath/Affirmation taken under the Constitution to uphold and defend the Constitution, and thus and thereby are bounden to enact laws in conformity with the Constitution. Is it not an indictment on Parliament by the Supreme Court in determining that the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended, is not only inconsistent with the Constitution, but also has defrauded public revenue causing extensive loss to the State ? Are Members of Parliament elected by the People to enact Laws to defraud public revenue causing extensive loss to the State ? Does any legitimacy flow from a fraud ?