



The right thing. The right way.

PUBLIC ENTERPRISES REFORM COMMISSION OF SRI LANKA

BY HAND

10th June 2005

Mr. R.P.L. Weerasinghe
Commissioner General of Inland Revenue
Department of Inland Revenue,
Sir Chittampalam A Gardiner Mawatha,
Colombo 2.

Dear Sir,

Enforcement of Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004

I refer to my Letter dated 17.5.2005, and the subsequent discussion had with you on 7.6.2005 at your Office.

As per such discussion had, I confirm the following, whilst making certain observations, as was requested by you:

1. In respect of the 13,482 persons, who had submitted Declarations, deemed as Declarations made under the above Act, that new Income Tax Files will be opened immediately.

However, the draft Instructions to the Deputy Commissioners dated 2.6.2005, states that these Declarations will be sent to the Information Branch and that the - "Information Branch will open income tax files for persons, who become liable to pay tax".

The Information Branch ought not have a desecration, not to open Income Tax Files.

To expedite correct revenue enforcement and collection the Information Branch should direct these Declarations to the relevant Units, as per the Addresses of the Declarant, whether corporate, partnership or individual; and it be left to the relevant Unit to deal with the Assessments in respect of the Years of Assessment 2002/03 and 2003/04; in that the Income Tax Amnesty is only upto 31.3.2002.

The Deputy Commissioner of the relevant Unit could then immediately send out Income Tax Return Forms for the Years of Assessment 2002/03, 2004/05 to these 13,482 Declarants, who had no Income Tax Files to be processed and returned by stipulated dates, and dates stipulated for payment of taxes, and the incidence of penalty for late payments.

In terms of the Declarations, it would be up to the Declarants to satisfy the relevant Deputy Commissioners, as to whether Income Tax ought be paid or not, by them.

Declarations would have made by persons who have no Income Tax Files to get Custom Duty and penalty waivers and refunds, Exchange Control fines and penalties and fines that had been imposed for violation of the several other Laws that came under the purview of the now repealed infamous Inland Revenue (Special Provisions) Act No. 10 of 2003. Such persons not having Income Tax Files in relation to the value volume of such transactions would have been an evasion of Income Tax. Hence Income Tax Files ought to be promptly opened and the provisions of the Inland Revenue Act No. 38 of 2000 strictly enforced.

In addition, such Declarations ought to result in collection of indirect taxes such as GST, VAT and Provincial Turnover Tax. Such Taxes ought to be correctly assessed and collected. No Amnesty has been afforded such Taxes under the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004. The previous Amnesty in respect of such indirect taxes have been specifically dealt with by the Supreme Court and condemned.

2. In respect of the 38,323 persons, who had submitted Declarations and who had had Income Tax Files, it was confirmed that these Declarations will be grouped in respect of the respective Income Tax Units and dispatched directly to the relevant Deputy Commissioners in charge of the respective Units immediately.

The respective Deputy Commissioners ought examine the Income Tax Returns forwarded by such persons for the Years of Assessment 2002/03 and 2003/04, to ascertain as to whether the income returned in respect of these 2 Years have been in conformity and sympathy with the Declarations made as at 31.3.2002.

Here again, Declarations would have been made to get Customs Duty and penalty waivers and refunds, Exchange Control fines waived, and penalties and fines etc. The Income Tax Returns in respect of the Years of Assessment 2002/03 and 2003/04 ought be in conformity with the value volume of such transaction, or else, Income Tax would continue to be paid by such persons, below their actual levels of income.

Furthermore, for example if Fixed Deposits had been declared as at 31.3.2002, then naturally interest income would arise in respect of this additional monies for the Years of Assessment 2002/03 and 2003/04, similarly rental incomes, etc.

In this category, the Assessor ought be directed by the Deputy Commissioner to raise additional Assessments for the Years of Assessment 2002/03 and 2003/04 in the context of the disclosures in the Declarations; or in the alternative, the Deputy Commissioners calling for explanations on such additional items / informations from the relevant Tax Payers, and thereafter causing Additional Assessments to be made; including in respect of indirect taxes, GST, VAT and Provincial Turnover Tax.

Here again new dates for payment of any Additional Taxes for the Years of Assessment 2002/03 and 2003/04 would have to be stipulated, with penalties for delay.

3. As regards the written requests made to you by the Controller of Exchange for Declarations of any Foreign Assets by persons for him to enforce the provisions of the Exchange Control Act, it was confirmed that the relevant Deputy Commissioners, upon examining the declarations would forward the relevant informations to the Controller of Exchange.

In the alternative, the names of the relevant Deputy Commissioners could be provided to the Controller of Exchange, so that the Controller of Exchange could give directions to provide such informations in terms of Section 39 of the Exchange Control Act. Such Declarations could even pertain to monies attributable to offences such as drugs, terrorism, etc.

4. As regards communication to the Commission to Investigate Allegations of Bribery or Corruption by persons who fall within the purview of the Bribery Act, it was confirmed that such information would be forwarded similarly by the relevant Deputy Commissioners upon the examination of the Declarations, where it is disclosed that persons coming under the purview of the Bribery Act or the Declaration of Assets law are identified.

In the alternative, the names of the relevant Deputy Commissioners could be provided to the Commission to Investigate Allegations of Bribery or Corruption so that the Commission could give directions to provide such informations in terms of the Bribery Act.

As you are aware, even the now repealed infamous Inland Revenue (Special Provisions) Act No. 10 of 2003, did not contemplate the granting of amnesty or pardon for offences of Bribery or Corruption, which offences were expressly excluded in terms of Section 6 (4) of the Inland Revenue (Special Provisions) Act 10 of 2003.

Given the dicta of the Supreme Court that the now repealed infamous Inland Revenue (Special Provisions) Act 10 of 2003 defrauded public revenue causing extensive loss to the state, and in the context of questions being raised, as to how and why such perverse law was conceived and enacted behind the back of Her Excellency the President and extended regardless of her objections, warrants that copies of all Declarations be forwarded to the Commission to Investigate Allegations of Bribery or Corruption, for the Commission to identify those persons, who should be dealt with for Bribery or Corruption; inasmuch as no legitimacy or entitlement flows from a fraud to a Declarant.

5. As regards, the draft Instructions to Deputy Commissioners dated 2.6.2005, my further observations as requested are as follows:

Classification of Declarations 1 (i)

These Declarations ought not be accepted as per paragraph 2 (a) of the said Instructions for grant of Income Tax Amnesty without verification of correctness of such Declarations. For instance false Cash Balances, Stocks, Receivables could have been declared as at 31.3.2002 to show cash inflows in subsequent years and to evade the payment of correct Income Tax in the subsequent years.

In terms of Section 4 (3) of Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, no Loss disclosed as at 31.3.2002 can be carried forward for the subsequent years.

It ought be noted that these Declarants had obviously not conformed and complied with the Laws coming under the purview of repealed infamous Inland Revenue (Special Provisions) Act No. 10 of 2003. Hence the need to verify the authenticity and the correctness, prior to unilaterally granting an Income Tax Amnesty.

Section 3 (3) of the Inland Revenue (Regulation of Amnesty) Act No 10 of 2004 imposes the requirement to verify the correctness of Declarations, prior to granting Income Tax Amnesty.

In addition, there being no Amnesty being granted as aforesaid in respect of indirect taxes, GST, VAT, Provincial Turnover Tax, steps ought be taken to assess and collect such indirect taxes.

Classifications of Declarations 1 (ii)

Here endeavour is made as per paragraph 2 (b) of the said Instructions to obtain incomplete information, calling for further information in terms of Section 3 (3) of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 for the grant of Income Tax Amnesty.

Here again it would be noted that these Declarants had obviously not conformed and complied with the Laws coming under the purview of repealed infamous Inland Revenue (Special Provisions) Act No. 10 of 2003. Hence the need to verify the authenticity and correctness, prior to unilaterally granting the amnesty.

Section 3 (3) of the Inland Revenue (Regulation of Amnesty) Act No 10 of 2004 imposes the requirement to verify the correctness of Declarations, prior to granting Income tax Amnesty.

In addition, there being no Amnesty being granted as aforesaid in respect of indirect taxes, GST, VAT, Provincial Turnover Tax, steps ought be taken to assess and collect such indirect taxes.

Classifications of Declarations 1 (iii)

These Declarations ought not be rejected as per paragraph 2(c) of the Instructions simply because the Declarants had not declared any income or assets or any source of income.

As dealt with above, some of these Declarations would have been made, simply to obtain Custom Duty and penalty waivers and refunds, Exchange Control fines and penalties and fines imposed under the several statutes coming under the purview of the now repealed infamous Inland Revenue (Special Provisions) Act No. 10 of 2003.

As dealt with above, these Declarations ought to be examined to consider whether levels of income declared are in conformity and sympathy with the levels of these other business transactions in respect of which they have sought Amnesty / Pardon for breach of the law; some of which could be criminal offences.

In addition, there being no Amnesty being granted as aforesaid in respect of indirect taxes, GST, VAT, Provincial Turnover Tax, steps ought be taken to assess and collect such indirect taxes.

VAT & GST Fraudulent Refunds

As regards, the fraud perpetrated *vis-à-vis* refunds of VAT and GST reported upon by the Auditor General, it was suggested that this matter be referred to the Presidential Investigation Unit for investigations and warranted action under the law.

As you are aware, the Supreme Court on two different occasions, one when Reference was made under Article 129 of the Constitution by Her Excellency the President, and second, when making determination on the Inland Revenue (Regulation of Amnesty) Bill, *inter-alia*, pronounced and determined that by the Inland Revenue (Special Provisions) Act No. 10 of 2003, there has been defraud of public revenue causing extensive loss to the State.

Hence, no legitimacy or entitlement, whatsoever, would flow from fraudulent transactions. Thus the Declarants have to be strictly dealt with in terms of Inland Revenue Act No. 38 of 2000, as persons who had endeavoured defraud public revenue causing extensive loss to the State; which is also an offence of corruption in terms of Section 70 of the Bribery Act. Thus the need to communicate with the Commission to Investigate Allegation of Bribery or Corruption.

I understand that all Declarations were given a "serial number". Hence a proper record ought be maintained in accordance with such "serial number" disclosing as to how the said respective Declarations have been dealt with, i.e. whether new Income Tax Files have been opened in respect of those who had no Income Tax Files; and whether additional Assessments have been made in respect of those who had Income Tax Files; including as to how the incidence of indirect taxes, GST, VAT and Provincial Turnover Tax had been dealt with.

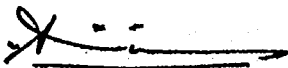
It was also confirmed that action has already been taken to collect all taxes that were due, which had been written-off or refunded, consequent to Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, and that litigations have been re-instituted, where withdrawn, and Appeal Hearings continued with, where stopped. This information too ought to be maintained on the above record.

The foregoing should be expeditiously implemented, inasmuch as the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 became law as far back as 20.10.2004 with the certification by the Hon. Speaker, having been presented as an "Urgent Bill". The repeal of the infamous Inland Revenue (Special Provisions) Act No. 10 of 2003 by the enactment of Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, became a reality due to my efforts and the sole commitment and determination by Her Excellency the President, and the voice of the people, whose funds had been defrauded as aforesaid, and which funds are held on their behalf in trust by the State.

It would stand to reason that no one, who had been actively involved in mooted, formulating, articulating and supporting the now repealed infamous Inland Revenue (Special Provisions) Act No. 10 of 2003, ought to be associated and/or involved in the implementation of the foregoing. It was acknowledged that some of such persons function as Members of the now created Tax Cluster!

No Gold or Silver Cards ought to be given to any of the Declarants until a passage of time whereby they are accepted to be honest and responsible Tax Payers! There is no logic in recognising those Tax Payers, who pay Rs. 1 Mn. tax where they ought to have paid very much more; whereas there is merit to recognise even the small tax Payer who has paid Tax honestly, with responsibility.

Yours faithfully,



Nihal Sri Ameresekere
Chairman

cc: Controller of Exchange
Director General, Commission to Investigate Allegations of Bribery or Corruption

Auditor General

Secretary to Her Excellency the President
Her Excellency the President