

REGISTERED POST

25th June 2003

Hon. Ranil Wickremasinghe, M.P.,
Prime Minister of the Republic of Sri Lanka,
Temple Trees,
Colombo 3.

Dear Prime Minister,

**Daily News Report on 19.6.2003 under the Caption -
"Cabinet extends Tax Amnesty to Aug. 15"**

I write with reference to my Letter dated 2.6.2003 on the *misleadingly* titled "Inland Revenue (Special Provisions) Bill", to which I have had no response. I enclose a photocopy of the above News Report under the name of Journalist, Ravi Laduwahetty, in the front page of the *Daily News* of 19.6.2003, and quote below the first 2 paragraphs of the said News Report;

"The Cabinet of Ministers, at its meeting last night, decided to extend the closing date for the tax amnesty from June 30 to August 15 this year"

"Prime Minister Ranil Wickremasinghe told his Ministers that the decision to extend the amnesty would give would-be tax payers the opportunity of curing any past defaults and becoming legitimate tax payers with effect from April 1, 2003, political sources told the *Daily News* last night"

Camouflagingly titled an "Inland Revenue Bill", the provisions of it go beyond the scope and ambit of "taxation", whilst the word "tax" is consistently *misleadingly* used right throughout - a sheer deception!

The word "tax" is defined only at the end of Section 13 i.e. "tax" shall 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 hereto". *Appallingly*, the definition of the word "tax" goes beyond the known realms of the English Language! Would not the above words "penalty payable", not only mean pecuniary payment of fines, but also, include "paying the penalty of imprisonment or jail sentences"? If not, how and why?

Some of the Laws included are Laws that "do not come within the purview" of "Inland Revenue" i.e. the Customs Ordinance (including the Code of Intellectual Property Act *vide* Section 166 thereof), Exchange Control Act, Import & Export Control Act, Excise Ordinance and Excise (Special Provisions) Act.

I am advised that some of the Offences under the above Acts include, Scheduled *un-bailable* Offences under the Criminal Procedure Code, punishable under the Penal Code, for which immunity / pardon from investigations / prosecutions / convictions cannot be granted under the guise, ruse and "smoke screen" of a purported "Income Tax Amnesty". The Authorities enforcing the above Laws, do not impose "taxes", but levy duties and impose fines and penalties, and institute *prosecutions* for frauds, crimes and offences punishable with imprisonment; *including the seizure / forfeiture of prohibited items.*

Under Article 34 of the Constitution only the President of the Republic has been *solely and exclusively* vested with Constitutional power to: **grant pardon, grant any respite, substitute a less severe form of punishment, or remit the whole or any part of any punishment imposed or of any penalty or forfeiture due to the State.**

Would not the Offences under the above Laws, *inter-alia*, include the following?

- 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.

Included in the *purported* "Income Tax Amnesty" are also the Turnover Tax Act, National Security Levy Act, Goods & Services Tax Act, Stamp Duty Act, Betting & Gaming Levy Act, which are not "income taxes", but statutory revenue levies imposed on the public and, *inter-alia*, collected on behalf of the state by persons, *who have no right or title*, to retain such funds collected from the public, *which are State property*.

Though stated that this *purported* "Income Tax Amnesty" is "with a view to securing the future compliance with the prevalent tax laws", there is no provision to secure and ensure such compliance, where offenders / law breakers have been granted immunity with impunity ! On the contrary, would not this *purported* "Income Tax Amnesty" grant refuge to and encourage the perpetration of crimes against society, defrauding State revenues, and eroding the rule of law, *whilst undermining the arduous efforts of public officers enforcing the above Laws, at times with risk to their own lives ?*

Would not the above, *inter-alia*, afford an opportunity to a person to fraudulently declare a considerable value of "fictitious" movable assets (other than cash), which are debarred from being verified (*vide* Section 3 (1) read with Section 4 (2)), and thereafter continue to evade paying any income tax in the future years, on the basis that he finances himself, as well as any others, on such "fictitious" movable assets declared as at 31.3.2002 ? *Likewise*, could not a person declare a "fictitious" loss as at 31.3.2002, as per his declaration, *which is mandated to be accepted and continue to evade paying income tax in the future years*, carrying forward such "fictitious" loss declared ? *What a contradiction it would be to securing and ensuring future compliance ?*

"Declaration" is to be *exclusively and solely* made to the Commissioner General of Inland Revenue or a Commissioner *authorised by him*, and not to any other Authority enforcing any of the above other Laws, and could be made by any person in Sri Lanka or abroad, even by a foreigner, including *an international terrorist, a money launderer, or any fugitive from the law*.

The Commissioner General of Inland Revenue (*or the authorised Commissioner*) is debarred from ascertaining the correctness of any declaration. Section 4 (2) states that "tax specified by such person as being the amount of tax paid by him shall be accepted by the relevant authority" (The word "tax" has to be understood in the context of its *perverse* definition under Section 13). The Commissioner General of Inland Revenue in terms of Section 2 (4) is compelled to give a mere acknowledgement in writing of a receipt of a declaration. The contents of the declaration is unknown / undisclosed; and cannot be communicated to any other, including the Authorities enforcing the above other Laws. Would this not also include even the Assessors enforcing the Inland Revenue Act ? *If so, how would future income tax compliance be secured and enforced correctly ?*

There is no disclosure of nexus and/or co-relationship between the value or volumes of items declared by a Declarant to the Commissioner General of Inland Revenue and any related transaction/s and/or offence/s and/or crime/s and/or fraud/s perpetrated under the above other Laws. The strict and absolute secrecy provisions as per Section 6 would prevent and debar the Commissioner General of Inland Revenue from even communicating the contents of any declaration to any one of the other Statutory Authorities enforcing the above other Laws. Under Section 4 (2) these Statutory Authorities are required to accept the "tax" (*vide* its *perverse* definition in Section 13) specified by the Declarant, regardless of the nexus / co-relation with the Declarant's declaration made to the Commissioner General of Inland Revenue ! What a paradox !

Would this not enable a Declarant to dictate his own fines and/or penalties and reclaim, as a matter of right any prohibited items seized / forfeited under the Customs Ordinance, *including arms, ammunitions, narcotics, drugs, etc.*, with Section 4 (1) stipulating "notwithstanding anything to the contrary in any other law", and Section 7 (b) giving the right to a Declarant to recover a refund of "tax" (which includes forfeited goods as per the *perverse* definition of the word "tax" in Section 13) ? *Would the right to dictate the penalty by a Declarant, also entitle him to dictate vis-à-vis a penalty a Declarant has to pay by way of a custodial sentence i.e. imprisonment ?* Would it not be a travesty of justice ?

The details of a declaration in view of the strict and absolute secrecy provision of Section 6 could not be ascertained / questioned / verified and the "mere flaunting of the acknowledgement receipt" given by the Commissioner General of Inland Revenue to a Declarant, would debar all law enforcement authorities from questioning / investigating / prosecuting such Declarant !

Section 3 (1) grants full immunity from any investigation or prosecution for any offence under any of the above Laws, including the manner in which any assets were funded, or the sources of income or assets, or any matter related to or incidental thereto. Section 4 (1) also stipulates that any investigation or prosecution "notwithstanding anything to the contrary in any other law" shall be withdrawn in respect of a Declarant.

The mere flaunting of the "acknowledgement in writing" from the Commissioner General of Inland Revenue "of a receipt of a declaration" by a Declarant affords him the status of being above the rule of law, and law enforcement authorities being prevented from even questioning such a Declarant ! Any pending investigation or prosecution against the Declarant under any of the above Laws shall stand withdrawn "notwithstanding anything to the contrary in any other law" i.e. immunity from all laws. A Declarant transcends all laws !

Would not any fraud or crime committed by any person "arising out of and/or connected with any matter" of a Declarant stand abrogated "notwithstanding anything to the contrary in any other law", including the Penal Code ? Would not the "mere flaunting of the written acknowledgement of a receipt" of a declaration given to a Declarant by the Commissioner General of Inland Revenue, afford such Declarant an "all encompassing" immunity from all frauds, crimes and offences under any other law - vide Section 3 (1) (e) - "any matter related to or incidental to any of the above" ? Would this not frustrate the process of law ?

Would it mean, that a Declarant is immune from prosecution even for a murder, where he has robbed money by killing a person, if he has declared such "ill-gotten money" as a Declarant to the Commissioner General of Inland Revenue and has obtained an "acknowledgement receipt" therefor ? Would it not be the same in the case of any "funds misappropriated / acquired fraudulently" and "stolen goods" declared as aforesaid, where investigations by law enforcement authorities in such regard would be frustrated ? *If not, how and why ?*

The very word "tax in dispute" (taking cognisance of the *perverse* definition of the word "tax" as per Section 13) bears out, that public officers performing their lawful duties "have discovered and disputed and consequently imposed penalties / fines, including the seizure / forfeiture of prohibited items. How could such "discovered items" come under the purview of a declaration of "undeclared monies" under the guise and ruse of a purported "Inland Revenue Bill" ? Such "disputed matters" would even be in the stage of already having been proven in a Court of Law, including criminal offences, and are pending in Appeal in Superior Courts ! How could any "pardon" be granted in violation of Article 34 of the Constitution ?

Section 3 (3) affords a full immunity in perpetuity from any investigation or prosecution under any laws in respect of any foreign exchange transactions after 31.3.2002, in connection with any asset declared by a Declarant, since such transaction after 31.3.2002, "is deemed" to have taken place retrospectively prior to 31.3.2002, to afford such immunity !

Section 3 (3) is in blatant violation of the United Nations Security Council Resolution No. 1373 of 28.9.2001 binding on Sri Lanka, and under which, Regulations had been gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968, vide - Gazette Extraordinary No. 1206/14, which said Regulations would thus be frustrated, with threat to national security, inasmuch as, could not and would not, foreign exchange transactions pertain to terrorist related activities and terrorist organisations ? Would this not grant terrorist a "haven" in violation of international law ?

The aforesaid Gazetted Regulations pertaining to terrorism, *inter-alia*, prohibit any funding directly or indirectly connected with terrorism, and any such funds discovered are to be frozen by the State, and any person upon conviction in Court is liable to imprisonment and any such financial assets or resources of such person shall be forfeited to the State. How could such Regulations be made impotent and freedom afforded to the movement of terrorism related funds, in violation of the obligations as a member country of the United Nations ? Section 3 (3) also violate international treaties on money laundering, to which Sri Lanka is a party and bound under international law.

Would not Section 3(3) enable a person to declare, say US \$ 500 Mn., as per his declaration made under Section 2 to the Commissioner General of Inland Revenue as receivable from foreign sources, which cannot be verified / questioned, and thereafter, regularly "channel" foreign exchange into the country, with no questions being able to be asked, let alone investigations and prosecutions, by any law enforcement authorities, in view of Section 4 (1) - "notwithstanding anything to the contrary in any other law" ! Would this not also give refuge to and shield those who have fraudulently acquired foreign assets / funds defrauding others, and thereby frustrating investigations by law enforcement authorities in that regard ?

Section 3 (3) is a new Section introduced at the Committee Stage of Parliament, and hence, was not placed on the Order Paper of Parliament. So also "Transitional Provisions" in Section 10 had been intentionally converted to be provisions in perpetuity at the Committee Stage of Parliament (even overlooking to change the short-title "Transitional Provisions" !)

Section 7 provides that a person could declare money or investments in his name or any other name or without any name. Thereby would not those who hold political and public office, liable for offences of "bribery and corruption", be able to declare any "ill-gotten funds" in the names of other persons, and show such funds, as loans received from such persons, thereby they escaping the provisions of the Bribery and Corruption Law?

Does not this provide a "haven" to circumvent the very "Bribery and Corruption Law", which had been sought to be excluded under Section 6, where those, who holding political and public office having gained "ill-gotten wealth" through "Bribery and Corruption", could now declare such "ill-gotten wealth" in the name of other persons, who do not fall within the definition of "public servant" under the Bribery Act, and thereby and thereafter, the concerned politicians / public servants, could show such monies as "loans" received from such Declarants, *from whom no questions could be asked, in terms of Section 6*? Would this not be in direct contradiction to and a means of contravening the provisions of the Bribery Act to be enforced by the Commission to Investigate Allegations of Bribery or Corruption and escaping from punishment therefor?

The *purported* "Income Tax Amnesty" causes wrongful or unlawful immense losses to the Government and confers wrongful or unlawful benefits, favours or advantages on wrong-doers and law breakers, who have defrauded the state / committed Offences / crimes. Therefore, this in itself, I am advised, is an Offence of "Corruption" under Section 70 of the Bribery Act, and those responsible therefor being liable to be punished with imprisonment for a term not exceeding 10-years.

Since as per Section 6 (4), the Commissioner General of Inland Revenue is specifically empowered to divulge the identity of a Declarant and any information contained in any declaration to the Commission to Investigate Allegations of Bribery or Corruption, do you not stand bounden in duty as the Prime Minister, to direct the Commissioner General of Inland Revenue to forward declarations, if any, made by Cabinet Ministers, Members of Parliament and other politicians to the Commission to Investigate Allegations of Bribery or Corruption, so as to give life and meaning to such Law, which you, yourself, fully endorsed in Parliament, when the Law was enacted in October 1994? *If not, why?* When this Law was enacted in Parliament in October 1994, you, *inter-alia*, stated thus -

"In fact, the whole question of bribery and corruption raises many fundamental questions in a democratic society. We have all got to recognise that corruption is a cancer of democracy, as one of the biggest problems that we faced, when elected representatives and officials of the Government who are also public servants - when their decisions are effected not by matters of political consideration but by pecuniary gains and financial gain".

Section 8 stipulates that, where Parliament disapproves a Regulation, any act which has been done under such Regulation, before it had been brought for approval to Parliament and disapproved, questionably and curiously stand valid and not invalidated. This has conferred to "unchecked and unfettered" power to the Finance Minister at his *whim and fancy* to Regulate to suit and/or oblige and/or favour any particular person/s, and even if Parliament disapproves the same, any act conferring such unlawful benefit / favour to such person/s stands valid and not invalidated. Would this not tantamount to the abdication of power by Parliament? If not, how and why?

There is reason to believe that Finance Minister K.N. Choksy, P.C., has through this *purported* "Income Tax Amnesty" afforded benefits to persons, who were his Clients at the time he practised Law, prior to accepting Ministerial Office. Has he disclosed any such conflict of interest to the Cabinet of Ministers and the President? *If not, why?*

The Political Editor of *The Sunday Times* of 22.6.2003 under the Caption "Clean Mr. Choksy", *inter-alia*, has reported that a Customs Officer has filed a Case, *alleging* that Finance Minister K.N. Choksy misusing his power has succeeded in doing, *what he could not do as a Lawyer!*

When this camouflagingly and misleadingly titled "Inland Revenue (Special Provisions) Bill" was being debated in Parliament, Column 1801 of the Hansard of 19.2.2003 quotes Finance Minister K.N.Choksy - "*The Hon. Member keeps repeating this. The Trans Asia Case has nothing to do with this*". Trans Asia Case, CA Application No. 235/99 instituted by Tran Asia Hotels Ltd., whose Counsel had been Mr. K.N. Choksy, P.C. against the Commissioner General of Inland Revenue had been rejected by the Court of Appeal on 13.12.2002 and Appeal is pending in the Supreme Court - SC(Spl)LA. 20/2003. *Would it mean that the said matter of Trans Asia Hotel would not come under the purview and ambit of this purported "Income Tax Amnesty" in terms of Finance Minister K.N. Choksy's said assertion to Parliament? If, however, it does, as the Prime Minister, what action would you take? If not, why?*

I, myself, in my professional practice, am aware of a major investigation having been / being conducted by the Controller of Exchange, even sending a Senior Investigating Officer overseas for investigations, *where the alleged Offenders were Clients of Mr. K.N. Choksy, P.C.* I wonder whether this major Exchange Control investigation, too, would be stymied and frustrated by the application of the above provision of this *purported* "Income Tax Amnesty" ? If so, ought not Finance Minister K.N. Choksy be arraigned therefor, if he had not disclosed any *conflict of interest* ?

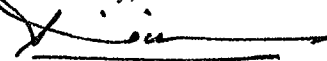
Ought the matter of *conflict of interest*, if any, of Finance Minister K.N. Choksy not be investigated into, *obtaining informations* in such regard from the Authorities enforcing the above Laws, inasmuch as, you recently having mooted a "Code of Conduct" for Members of Parliament, appointing a Committee in that regard ? *If not, why ?*

In the context of the foregoing analytical disclosures, demonstrating that the purported "Income Tax Amnesty" goes beyond the realm and bounds of "Income Tax", encompassing frauds, offences and crimes, the contents of the enclosed Daily News Report of the statements attributed to Finance Minister K.N. Choksy, inter-alia, that "it was advisable to bring in more tax payers into the net that the amounts which the Government has netted in could not be quantified", given the background of the extensive misleading media campaign carried out after the passage of the Bill and not before, you, as an Attorney-at-Law, would concede, are not only misrepresentations misleading and deceiving the public, suppressing the foregoing truths and realities, but also transcends any logical and rational comprehension !

Given the *indebtedness of the downtrodden masses of the country*, how could, at their cost, such unlawful "financial bonanzas" be conferred on / afforded to a "privileged few", who have broken the law, defrauded the State and committed Offences / crimes ? Far more worse would be the erosion of the rule of law in blatant violation of the dicta in Article 27 of the Constitution, *in which is enshrined the Directive Principles of State Policy and Fundamental Duties.*

In the context of the foregoing analytical disclosures, is not this purported "Income Tax Amnesty" a "great deception" perpetrated on the downtrodden masses of this country, in gross betrayal of their trust and an advocacy of a culture of the State sponsored prevention / frustration of investigation and prosecution of frauds, offences and crimes against society, thereby eroding moral standards ?

Yours truly,



Nihal Sri Ameresekere

cc Her Excellency the President, Chandrika Bandaranaike Kumaratunga

Hon K.C. Kamalabayson, P.C., Attorney General

Mr. K. Suseelar, Commissioner General Inland Revenue
Mr. S.A.C.S.W. Jayatilleke, Director General of Customs
Mr. P.E. Bandara, Director General of Excise
Mr. R. Samaraweera, Controller of Import & Exports
Mr. H.A.G. Hettiarachchi, Controller of Exchange
Mr. A.S. Jayawardena, Governor, Central Bank of Sri Lanka
Mr. A. Coomarasamy, Chairman, Commission to Investigate Allegations of Bribery or Corruption

In the public interest, you are urged to concur with / refute / controvert, any of the foregoing

Mr. Ravi Ladduwahetty, Journalist, *Daily New*
Mr. Rodney Martinez, News Editor, *Daily News*
Mr. P. Balasingham, Associate Editor, *Daily News*
Mr. Nalin Ladduwahetty, Attorney-at-Law
Chairman Associated Newspapers of (Ceylon) Ltd.

Re - Daily News Report on 19.6.2003

Mr. Suren Gnanaraj, Journalist, *The Sunday Times*
Mr. Faizal Samath, Business / Financial Editor, *The Sunday Times*
Mr. Sinha Ratnatunga, Political Editor / Editor *The Sunday Times*

Re - Interview with Commissioner General Inland Revenue and Political Comment on 22.6.2003

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Cabinet extends Tax Amnesty to Aug. 15

by Ravi Ladduwahetty

The Cabinet of Ministers, at its meeting last night, decided to extend the closing date for the tax amnesty from June 30 to August 15 this year.

Prime Minister Ranil Wickremesinghe has told his Ministers that the decision to extend the amnesty would give would-be tax payers the opportunity of curing any past defaults and becoming legitimate tax payers with effect from April 1, 2003, political sources told the *Daily News* last night.

The Cabinet also authorised Finance Minister K.N. Choksy to introduce the amending legislation in Parliament to give effect to this date.

Minister Choksy has told Cabinet that the Commissioner-General of Inland Revenue has received 4520 declarations so far under the Tax Amnesty law which is the highest number of declarations which have been received under any amnesty.

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Cabinet extends ...

Continued from page 1

The Minister had explained to Cabinet that there were very many more declarations which were expected and that Chartered Accountants and Tax Advisors had also recommended the extension of the date.

This is in contrast to the two previous amnesties which brought in less than ten declarations. However, these sources pointed out that the amounts which the Government has netted in could not be quantified due to the prevailing Secrecy Laws and that the amount would be known only after August 15.

The Cabinet had been of the view that it was advisable to bring in more tax payers into the net

voluntarily in as much as that would also enable the collection of greater revenue by direct tax and eventually assist the Government in reducing the indirect taxes such as VAT and Customs Duties which place burdens on the poorer segments of society.

The Cabinet has also approved a Memorandum which was also submitted by Finance Minister Choksy to effect the amendments to the VAT Law.

He has explained to the Cabinet that the amendments were mandatory, consequent upon experience gathered by implementation of law over the past six months. The amendments to the Bill will be introduced in Parliament next month and are directed mainly to rectify anomalies in the agricultural sector and in the processing of food stuffs, the sources said.

This follows presentations made by Trade Chambers to the Finance Minister requesting that the amendments be