

URGENT / IMPORTANT

Dear 'P.B.'

FURTHER NOTE RE – "TAX AMNESTY"

Re - my Note dated 26.4.2004 and the subsequent telephone conversations had, I apprise you of the following:

1. Upon Inland Revenue (Special Provisions) Act No. 10 of 2003 being enacted, H.E. forwarded a Note to Cabinet on 10.7.2003 setting out the obnoxious features of the law and requiring that the law be suspended forthwith and repealed. (Copy attached).
2. Secretary to H.E. filed a Statement on 15.12.2003 (Copy of Statement forwarded) supporting the Writ Application to quash the Declarations made and Amnesties granted consequent to Newspaper Advertisements placed by the former Secretary, Ministry of Finance, Charitha Ratwatte, whereas Act No. 31 of 2003, to extend up to 31.8.2003 the terminal date of 30.6.2003 in Act No. 10 of 2003, became law only on 22.10.2003 upon the certification by the Speaker. Court of Appeal has already issued Notices on the Commissioner General of Inland Revenue and the Attorney General to show cause.

In addition, Writs have been sought to quash / prohibit Amnesties in respect of criminal and other offences committed by a declarant.

3. Subsequently, on 8.3.2004 H.E. made a Reference under Article 129(1) of the Constitution to the Supreme Court seeking an Opinion on this obnoxious law (Copy attached).
4. Consequently, a 5-Member Bench of the Supreme Court unanimously opined that State funds are been misappropriated and public revenue defrauded causing extensive loss to the State, and that such public revenue is held in trust for the people, who cannot be denied its benefit. The Supreme Court also held that the law was antithetic to the Rule of Law, which is the underlying basis of the Constitution. (Copy of Supreme Court Opinion attached).
5. Act No. 10 of 2003 repealed the simple Income Tax Amnesty afforded by Act No. 7 of 2002 enacted in June 2002. A simple option would be to repeal Act No. 10 of 2003 and extend the date of validity of Act No. 7 of 2002 deeming all Declarations made under Act No. 10 of 2003 to be Declarations made under Act No. 7 of 2002, thereby eliminating the obnoxious features and **collecting legitimate revenue due to the State**, which the Supreme Court has held as being misappropriated and the State being defrauded causing extensive loss to the State. **Appropriate revenue collection models could be enforced.**
6. **The obnoxious features of the several Sections of Act No 10 of 2003 have been comprehensively analysed and could be made available and explained at a discussion.** In fact, some material Sections, such as 3(3) including Exchange Control offences, and Section 10 converting transitional provisions into perpetuity, had been surreptitiously effected during the Committee Stage without they having been in the original Bill.
7. The correctness of Declarations cannot be verified. The Assessor cannot verify future compliance to be in conformity with a Declaration. The secrecy provisions prevent the Bribery Commission obtaining details, **unless after institution of prosecution. These are only some of the obnoxious features.**

Kind regards,


Nihal Sri Ameresekere

6.5.2004

cc: Hon. Minister of Finance
Her Excellency the President