

Dr. P.B. Jayasundera
Secretary, Ministry of Finance.

NOTE

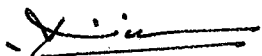
"Tax Amnesty"

At the discussion had on 24.5.2004, together with the Inland Revenue / Finance Ministry Officials, the following matters were noted to be acted upon on an urgent basis.

1. It was noted that the following numbers of Declarations had been received under the previous Government's Tax Amnesty.
 - i. Under Act No. 10 of 2003 – 16,860 Declarations up to 30.6.2003
 - ii. Under extension Act No. 31 of 2003 – 34,945 Declarations between 1.7.2003 and 31.8.2003
2. Though there had been 51,805 Declarations, it was disclosed that there had been only about 3,000 new Tax payers. Hence 95% of the Declarations had been from existing Tax payers.
3. It was noted that the 34,945 Declarations made between 1.7.2003 and 31.3.2003 were in jeopardy, since there was no valid law to have received and acted on such Declarations, because the Extension Act No. 31 of 2003 had become law only on 22.10.2003 upon the Speaker's certificate. (i.e. after last date of Amnesty 31.8.2003)
4. On the unlawfulness of the above, the Court of Appeal had already issued Notices on the Commissioner General of Inland Revenue and the Attorney General in a Writ Application filed by me. The Secretary to the President had also filed papers agreeing with the position taken by me.
5. It was noted that the Government's objective was to afford only an Income Tax Amnesty and not to forgo, write-off or refund indirect taxes and other government revenues.
6. It was noted that Act No. 10 of 2003 (Tax Amnesty Act), was complicated and problem riddled, and therefore any attempt to make amendments to it could only cause further complications, and perhaps even leave loopholes. Explaining the complicated amendments to Parliament and the public would also be an issue.
7. Furthermore, the Supreme Court had already pronounced that the provisions of Act No. 10 of 2003 had caused the misappropriation and the defrauding of large extents of public revenues. Therefore, no legitimate rights could flow from such fraudulent transactions, and indirect taxes and public revenues held back would be retention of stolen public property, which is a non-bailable criminal offence.
8. Accordingly, it was decided to draft a simple Bill to repeal Act No. 10 of 2003. This also conforms to the Cabinet Memorandum dated 10.7.2003 of H.E. the President, pointing out the obnoxious features of the Amnesty Law, 10 of 2003, and then requiring the same to be immediately suspended and repealed (i.e even before the Supreme Court pronouncement on 26.3.2004)

9. With Act No. 10 of 2003 enacted on 17.3.2003, the then operative Income Tax Amnesty Act No. 7 of 2002, which was applicable for the same period as Act No. 10 of 2003 (i.e. effective up to 31.3.2002) was repealed.
10. Therefore, with the repealing of Act No. 10 of 2003, the repealed previous Income Tax Amnesty Act No. 7 of 2002 (which was a plain and simple Income Tax Amnesty) to be restored and to be made effective, with certain requisite modifications / amendments.
11. Furthermore, special provisions would have to be made in the repealing law to deal with cases where indirect taxes and other government revenues had been waived / written-off or Court Cases withdrawn in giving effect to the Amnesty. Provisions also to be made to facilitate speedy collection of defaulted taxes by affording rebates on early payments.
12. Declarations made under the repealed law to be deemed to be Declarations under Act No. 7 of 2002 and Declarants to be granted exclusively only an Income Tax Amnesty.
13. This would be a goodwill gesture by the Government to the 37,945 Declarants, whose Declarations are in jeopardy before Court in the above Writ Application. The Income Tax Officials present at the discussion informed that no action had been taken on these Declarations.
14. I undertook to assist with the above, consulting Lawyers, who had appeared in the Cases in the Supreme Court challenging Act No. 10 of 2003 and the Legal Draftsman to draft a proposed repealing Bill and also to draft a proposed Cabinet Paper.
15. It was noted that the Attorney General had given a completely wrong Opinion when H.E. the President had called for his Opinion, specifically pointing out the obnoxious features. The Attorney General's Opinion was proven to be wrong and perverse upon the pronouncement made by a 5-Judge Bench of the Supreme Court on the Tax Amnesty Law.
16. Requisite consent judgment to be agreed upon in the above Writ Application in Court in the context of the Supreme Court Opinion. Therefore, Government would be acting as above in conformity with the Judgment of Court.
17. Appropriate media campaign to be launched to mobilise public opinion once again when the perverse Tax Amnesty Law is being repealed. Already there is public agitation for action by the Government.

Kind regards,



Nihal Sri Ameresekere

28.5.2004