

Mr. Kandiah Susilar  
Commissioner General of Inland Revenue

**MEMO**

**Inland Revenue (Regulation of Amnesty) Law**

You are aware that the above Bill was passed by a majority of 50 Votes in Parliament on 22.9.2004 to repeal the *fraudulent* Tax Amnesty Law, i.e. Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003, *which craftily encompassed several other Statutes, which had nothing to do with Inland Revenue.*

You also aware that Supreme Court in its Determination on the Inland Revenue (Regulation of Amnesty) Bill on **23.8.2004**, *inter-alia*, determined that:

"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)

**As you are aware, it is the norm that nothing flows from a fraud, nor any legitimate right is derived and/or acquired from any illegality.**

I draw attention to Section 3 of the Inland Revenue (Regulation of Amnesty) Law, wherein it is expressly stipulated that the Declarations made under the repealed Inland Revenue (Special Provisions) Act No. 10 of 2003, amended by Act No. 31 of 2003, shall be deemed to be Declarations to have been made under the Inland Revenue (Regulation of Amnesty) Law, in respect of which Declarations, only Income Tax Amnesty is to be granted, that too, after verification of the correctness of such Declarations, and you and/or any Deputy Commissioner authorised by you, has been empowered to call for further particulars in respect of such Declarations for such verification of correctness.

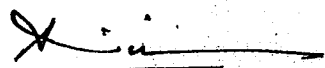
I also draw attention to Section 2 Sub-section (2), which was amended during the Committee Stage of the Bill in Parliament, whereby a liability that stood prior to the enactment of Inland Revenue (Special Provisions) Act No. 10 of 2003, amended by Act No. 31 of 2003, **stands, notwithstanding anything done or any right or liberty acquired in terms of the provisions of the said Act.**

Contrary to what the former Finance Minister K.N. Choksy P.C., M.P. had held out to public of this country that over 51,000 new Tax Files had been opened thereby expanding the Tax Net, you are aware of the deliberate and knowing falsity of such statement, inasmuch as, as per your records, **confirmed in Parliament that only 282 new Tax Files had been voluntarily opened** by these Declarants, since the Secrecy Provisions which then existed, prevented you from communicating the Declarations to your own Assessors. **Such Secrecy does not prevail now, and the provisions of Inland Revenue Act No. 38 of 2000 will apply.**

In the foregoing circumstances, I was appalled that one of your Commissioner's namely Ratnayake Jothipala had given erroneous and misleading information to *The Sunday Leader* as published in the Business Section yesterday, 10.10.2004, a copy of which is attached. **I trust that you will take corrective and precautionary action, inasmuch as the Supreme Court has held the matter to have defrauded public revenue, which is a violation of Article 28 of the Constitution, and a contravention of the Offences Against Public Property Act No. 12 of 1982.**

I also draw attention to my Writ Application in the Court of Appeal No. 1661/2003, in which, the Supreme Court directed that Notices be issued on all Respondents, and the Notices have been so issued by the Court of Appeal. The 51,805 Declarations made under Inland Revenue (Special Provisions) Act No. 10 of 2003, amended by Act No. 31 of 2003, are in issue in this Case, in the context of certain prayers. As you are aware the Secretary to the President, as a Respondent therein, **has concurred** with my said Application and the prayers.

Kind regards,



Nihal Sri Ameresekere

11.10.2004

cc: Controller of Exchange – *vide Letter dated 1.10.2004 from Secretary, Ministry of Finance*  
Chairman, Commission to Investigate Allegations of Bribery or Corruption – *vide CA*  
*Application No. 1661/2003*

Secretary Ministry of Finance  
Hon. Minister of Finance

H.E. the President

## Call for fresh tax amnesty applications causes outcry

By  
JAMILA NAJMUDDIN

THE decision by the Inland Revenue Department last week to call for fresh applications with regard to the tax amnesty granted under the previous UNF regime has caused much confusion and consternation.

The Inland Revenue (Special Provisions) Act No. 10 of 2003 was passed by the UPFA government in parliament this month. However, there are over 51,000 declarants affected due to the abolition of this bill.

The declarants voiced heavy objection against the bill, stating it was an 'unfair' move by the UPFA government, stating the trust placed in politicians in this country would be shattered forever if governments kept changing laws according to their whims and fancies.

According to the terms and conditions of the new amnesty, the Inland Revenue Department has called for fresh applications which would require the previous 51,000 declarants and new applicants to declare thus far undeclared assets or income, any additional or new assets and sources of income, when making their applications.

According to the Inland Revenue Department, it is only after all this information is declared that the previous declarants and fresh applicants would be able to qualify for the new amnesty.

According to the previous Inland Revenue (Special Provisions) Act No. 10 of 2003, declarants were granted an amnesty till March 31, 2002, while either declaring their undeclared assets or income to the Inland Revenue Department.

According to Commissioner (Payee/Tax Payer Services/ Withholding Taxes), Inland Revenue De-

partment, Ratnayake Jothipala, the new bill has still not been signed by Speaker, W.J.M. Lokubandara and it is only after he signs it that the Inland Revenue Department would be able to call for fresh applications.

"Once the bill is signed we will carry a paper notice stating all the fresh terms and conditions. A copy of the certified declaration was handed to people who have already declared their undeclared assets, along with an acknowledgement letter," Jothipala said.

"If these people already have tax files, they have to hand over these documents to the respective deputy commissioners who in turn will check the accuracy of the declared information and if conditions are satisfied, they would qualify for the new amnesty."

With regard to the declarants' argument stating the abolition as 'unfair', Jothipala replied that during the previous amnesty, pardon was granted only till March 31, 2002. However, after this date the declarants were notified to pay their taxes.

"Out of the 51,000 declarants only 13,000 declarants had opened tax files and paid the taxes after this date. The remaining declarants discontinued paying the taxes even though advertisements were carried through the media informing these people to open files and pay the taxes," Jothipala said.

However, according to Jothipala, even after repeated advertisements, less than 300 declarants volunteered to open new files and pay their due taxes.

"They are now saying it is unfair, but what happened when they discontinued paying their taxes? Pardon was granted only until a certain period but they continued to avoid paying their dues. They have

to ask themselves if they have fulfilled their obligations," Jothipala said.

Arguments have also arisen amongst the declarants who say that with the exposure of all their undeclared money and assets, the government would have access to all their information.

In response to this claim, Jothipala said such previously undeclared information would not be used even if people failed to qualify for the new amnesty as absolute secrecy would be maintained.

"The department will never use this information for any purpose,"

Jothipala asserted.

Jothipala added the government and the UNF passed this bill in "good faith to get the public's black money transformed to white," and that it was also passed in order for the public to get involved in the tax net.

"The public was given amnesty and will still continue to do so if they qualify for the new Amnesty," Jothipala said.

The new amnesty which is yet to be signed by the Speaker will be only for income taxes as opposed to the earlier bill which applied to indirect taxes as well.