

**P E R C**

**PUBLIC ENTERPRISES REFORM  
COMMISSION OF SRI LANKA**

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10<sup>th</sup> December 2004

Mr. K. Susilar  
Commissioner General of Inland Revenue  
Department of Inland Revenue  
Sir Chittampalam A Gardiner Mawatha  
Colombo 2.

Dear Sir,

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

I write further to my Note dated 1.12.2004 addressed to the Secretary to the Treasury, with copy to you and others, *vis-à-vis*, a Notice placed in the *Daily News* of 1.12.2004, (*I understand whilst you were away from Colombo*), calling for Applications from those Declarants, who wish to avail themselves of the Income Tax Amnesty afforded under the aforesaid Act No. 10 of 2004; whereas there is no provision in the aforesaid Act No. 10 of 2004 to have called for such fresh Applications. (A copy of my said Note dated 1.12.2004 is attached for your easy reference).

On the instructions of H.E. the President and as requested by the Secretary to the Treasury, I actively assisted in the formulation of the aforesaid Act No. 10 of 2004, co-ordinating with the Officials of the Ministry of Finance, the Legal Draftsperson and Officers of the Attorney General's Department, and rendered assistance to the Hon. Minister from the Officials' Box, when the aforesaid Act No. 10 of 2004 was debated and enacted by Parliament.

I draw your kind attention to Section 3 sub-section (2) of the aforesaid Act No. 10 of 2004;

"3. (2) For the avoidance of doubt it is hereby declared –

(a) that any declaration made under the provisions-

- (i) of the Inland Revenue (Special Provisions) Act, No. 7 of 2002 shall in accordance with the provisions of subsection (2) of section 11 of the Inland Revenue (Special Provisions) Act, No. 10 of 2003 ; and
- (ii) of the Inland Revenue (Special provisions ) Act, No., 10 of 2003, shall in accordance with the provisions of subsection (1) of section 3 of this Act,

be deemed to be a declaration to which the provisions of this section shall be applicable to ; and

- (b) that any reference to the Inland Revenue (Special Provisions) Act, No.10 of 2003 shall mean and include the Inland Revenue (Special Provisions )Act, No.10 of 2003 as amended by the Inland Revenue (Special Provisions) (Amendment ) Act, No. 31 of 2003."

**Therefore, it is abundantly clear that the 51,805 Declarations made previously had all been deemed to be Declarations, as having been made under the aforesaid Act No. 10 of 2004.**

I also draw your kind attention to Section 2 sub-section (2), and the *proviso* of Section 3 sub-section (1) of the aforesaid Act No. 10 of 2004.

- "2. (2) Subject to the provisions of section 3 of this Act, any person who, on the day immediately prior to the enactment of the inland Revenue (Special Provisions) Act, No. 10 of 2003, was liable, to pay any tax, levy, penalty (including any penalty in respect of any offence), or fine or to forfeiture in terms of any of the laws specified in the Schedule to the aforesaid Act, shall continue to be liable to the payment of such tax, levy, penalty, (including any penalty in respect of any offence), forfeiture or fine, notwithstanding anything done or any right or liberty acquired in terms of the provisions of the aforesaid Act."

"3 (1) *proviso*

Provided that in granting the amnesty as set out above, the Commissioner-General shall verify the correctness of the declarations received by him and grant the amnesty only in respect of such part of the declaration which discloses information in relation to undeclared income, undeclared assets and undeclared sources of income or additional income, assets and sources of income."

It is very clear from the foregoing, that you and/or an Officer not below the rank of a Deputy Commissioner authorised by you (read with Section 3 (3) of Act No. 10 of 2004) shall verify the correctness of the Declarations received, to grant an Income Tax Amnesty upto 31.3.2002, as provided for in Act No. 10 of 2004.

I also draw your kind attention to Section 3 sub-section (3) of the aforesaid Act No. 10 of 2004;

- "3. (3) The Commissioner-General or officer not below the rank of Deputy Commissioner authorized by him in that behalf may, where necessary require the persons whose declarations have been acknowledged to furnish him with the necessary particulars or with additional particulars as may be necessary for the purpose of assisting him in determining whether or not the amnesty should be granted. The particulars shall be furnished in the prescribed form within two weeks of the date on which such information was requested from him."

It is therefore also very clear that a Deputy Commissioner authorised by you, where necessary could require persons, whose Declarations have been acknowledged, to furnish any further necessary additional particulars, for the purpose of determining whether or not the Income Tax Amnesty should be granted in terms of Act No. 10 of 2004.

**Inherent in the foregoing is that all 51,805 Declarations that had been made have to be examined for the purpose of granting an Income Tax Amnesty, as provided for in the said Act No. 10 of 2004.**

On the day the aforesaid Act No. 10 of 2004 was debated and passed by Parliament, you confirmed to me in the Officials' Box the following particulars re – the Declarations already made:

|   |               |
|---|---------------|
| No. of Declarations made by persons, <u>who had Income Tax Files</u>          | 38,323        |
| No. of Declarations made by persons, <u>who did not have Income Tax Files</u> | 13,482        |
| No. of Total Declarations made  | <u>51,805</u> |

I communicated the above facts to the Hon. Minister and these facts were disclosed to Parliament.

In terms of the provisions of the Act No. 10 of 2004, what is required to be done is that the 38,323 Declarations made by persons, who have Income Tax Files be forwarded to the relevant Deputy Commissioner, under whose control and purview the said respective Tax Payers come, so that Income Tax Amnesty, after verification, calling for further particulars where necessary, could be granted upto 31.3.2002, and the correct Income Taxes due to the State for the subsequent 2 Years of Assessment 2002/03 and 2003/04 and the quarterly payments for the Year of Assessment 2004/05 could be correctly assessed and collected.

In respect of the 13,482 Declarations made by persons, who did not have Income Tax Files, steps ought to be taken to distribute these Declarations to the relevant Deputy Commissioner, as per the categorisation of Income Tax Payers, *vis-à-vis*, the respective Units of your Department and to the relevant Regional Units of your Department, for 13,482 New Income Tax Files to be opened, so that Income Tax Amnesty, after verification, calling for further particulars where necessary, could be granted upto 31.3.2002, and the correct Income Taxes due to the State for the subsequent 2 Years of Assessment 2002/03 and 2003/04 and the quarterly payments for the Year of Assessment 2004/05 could be correctly assessed and collected.

Also in the Officials' Box at Parliament, you confirmed to me that you were previously unable to open ~~New Income Tax Files in view of the special secrecy provisions in the previous Act No. 10 of 2003, which is now repealed, and that therefore, consequent to a Press Notice you had published at that time only 282 persons had authorised you to open New Income Tax Files, thereby giving the lie to the Statements made by the former Finance Minister, K.N. Choksy P.C. M.P., that 51,000 New Tax Files had been opened.~~ I communicated this fact to the Hon. Minister and such fact was made known to Parliament.

The Supreme Court Determination in respect of the Act No. 10 of 2004, which was communicated to the Hon. Speaker and placed before Parliament prior to the said Act No. 10 of 2004 being enacted, *inter-alia*, had cited its previous pronouncement made by a 5-Member Bench on a Reference made by H.E. the President in respect of Act No. 10 of 2003; which had *inter-alia*, pronounced: that the perverse Act No. 10 of 2003, not only was inconsistent with the Constitution, violative of fundamental rights, violative of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights and antithetic to the Rule of Law, but also had defrauded public revenue causing extensive loss to the State.

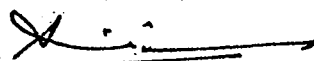
With the Supreme Court having determined that the perverse Act No. 10 of 2003 to be an illegality and a fraud on the public, no right or legitimacy, whatsoever, could flow and/or be derived from such illegality and fraud.

In the recent Budget presented to Parliament, in fact, the Hon. Minister has proposed that to expand the Tax Net, monthly Electricity Bills, Credit Card Bills, Telephone Bills, Air Travel Tickets, ownership of a Car be factors examined to open New Income Tax Files. Hence, in accordance with Government policy, New Income Tax Files should be opened in respect of the 13,482 persons, who had made Declarations and who have no Income Tax Files.

The aforesaid Notice dated 1.12.2004 published would result in Tax evasion, inasmuch as, consequent to your previous Notice only 282 persons had volunteered to have New Income Tax Files opened.

Therefore, you ought to act according to the provisions of Act No. 10 of 2004, and more so in conformity with Government policy to increase revenue by expanding the Tax Net. *Inasmuch as, in the context of a fraud, there is no right or entitlement derived by a Declarant.*

Yours faithfully,



Nihal Sri Ameresekere  
Chairman

cc: Secretary to the Treasury  
Hon. Minister of Finance  
H.E. the President