

PRESIDENT'S OFFICE**No. 1900. 27 November 1996****NO. 101 OF 1996: FINAL RELIEF ON TAX, INTEREST, PENALTY AND ADDITIONAL TAX ACT, 1996.**

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

To broaden the tax base and to break the culture of non-payment of tax by persuading every defaulter to pay his, her or its fair share of tax and, for those purposes, to provide for certain relief in respect of certain tax, interest, penalty and additional tax; and to provide for matters connected therewith.

(English text signed by the President.) (Assented to 12 November 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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INTERPRETATION

Definitions

1. (1) For the purposes of this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962 (Act No. 58 of 1962), the Sales Tax Act, 1978 (Act No. 103 of 1978), prior to the repeal thereof, the Value-Added Tax Act, 1991 (Act No. 89 of 1991), or any law of a former state or territory imposing any tax similar to the tax imposed by any of the said Acts, bears the meaning so assigned, and, unless the context otherwise indicates-

(i) "Commissioner" means the Commissioner for Inland Revenue or any officer who performed similar functions as that Commissioner in a former state or territory; (i)

(ii) "former state or territory" means the former Republics of Transkei, Bophuthatswana, Venda and Ciskei and any territory declared under section 26 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), prior to the repeal thereof, to be a self-governing territory; (vii)

(iii) "qualifying employer" means any employer who-

(a) was not registered with the Commissioner for the purposes of employees' tax as at 26 April 1994 and had not on or before that date applied to the Commissioner to be registered for those purposes;

(b) was so registered as at 26 April 1994, but in respect of whom the Commissioner was unable to enforce any law regulating the payment of employees' tax, by reason of the fact that such employer's whereabouts for the purposes of employees' tax were unknown to the Commissioner on that date;

(c) has previously rendered a declaration in terms of paragraph 14(2) of the Fourth

Schedule to the Income Tax Act, 1962, to the Commissioner in respect of any period which ended on or before 28 February 1994 and during the relief period discloses to the Commissioner full and true details of any amount of employees' tax required to be deducted or withheld from any remuneration of any employee during such period, which were required to be included in such declaration, but which such employer failed so to include and which were unknown to the Commissioner as at 1 November 1996; or

(d) is registered with the Commissioner for employees' tax purposes and is liable for any interest or penalty in terms of the Income Tax Act, 1962, in respect of the late payment or underpayment of any employees' tax, other than employees' tax which has become payable as a result of the disclosure of details by such employer as contemplated in paragraph (c), in relation to any period which ended on or before 28 February 1994, and who-

(i) submits all declarations in respect of employees' tax for all periods which ended on or before 31 October 1996, on or before the last day of the relief period; or

(ii) makes arrangements with the Commissioner during the relief period to submit such declarations within six months after the last day of the relief period; (iv)

(iv) "qualifying taxpayer" means any taxpayer who-

(a) was not registered with the Commissioner for the purposes of normal tax as at 26 April 1994 and had not on or before that date applied to the Commissioner to be registered for those purposes;

(b) was so registered as at 26 April 1994, but in respect of whom the Commissioner was unable to enforce any law imposing normal tax by reason of the fact that such taxpayer's whereabouts for the purposes of normal tax were unknown to the Commissioner on that date;

(c) has previously rendered a return of income to the Commissioner in respect of any year of assessment which ended on or before 31 December 1994, and during the relief period discloses to the Commissioner full and true details of any income, deduction or allowance which were required to be included in such return, but which such taxpayer failed so to include and which were unknown to the Commissioner as at 1 November 1996; or

(d) is registered with the Commissioner for normal tax purposes and is liable for any interest, penalty or additional tax in terms of the Income Tax Act, 1962, in respect of the late payment or underpayment of any normal tax, other than normal tax which has become payable as a result of the disclosure by such taxpayer of details contemplated in paragraph (c), in relation to any year of assessment which ended on or before 31 December 1994 and who-

(i) submits all returns of income for all years of assessment ending on or before 31 December 1996, on or before the last day of the relief period; or

(ii) makes arrangements with the Commissioner during the relief period to submit all returns of income in respect of-

(aa) all years of assessment which ended on or before 31 December 1995, within three months after the last day of the relief period; and

(bb) any year of assessment ending during the 12 months' period ending on 31 December 1996, within 15 months after the end of such year of assessment; (ii)

(v) "qualifying vendor" means any vendor who-

(a) was not registered with the Commissioner for the purposes of value-added tax as at 26 April 1994 and had not on or before that date applied to the Commissioner to be registered for those purposes;

(b) was so registered as at 26 April 1994, but in respect of whom the Commissioner was unable to enforce any law imposing value-added tax by reason of the fact that such vendor's whereabouts for the purposes of value-added tax, were unknown to the Commissioner on that date;

(c) has previously rendered a return in terms of the Value-Added Tax Act, 1991, to the Commissioner, where, for the purposes of section 27 of the said Act such vendor is a vendor falling within-

(i) Category A, in relation to any tax period which ended on or before 10 April 1994; and

(ii) any other Category, in relation to any tax period which ended on or before 10 March 1994,

and during the relief period discloses to the Commissioner full and true details for the purposes of any calculation of value-added tax payable or refundable, which were required to be included in such return but which such vendor had failed so to include and which were unknown to the Commissioner as at 1 November 1996; or

(d) is registered with the Commissioner for value-added tax purposes and is liable for any interest, penalty or additional tax in terms of the Value-Added Tax Act, 1991, in respect of the late payment or underpayment of any value-added tax, other than any value-added tax which has become payable as a result of the disclosure of details by such vendor as contemplated in paragraph (c), where, for the purposes of section 27 of the said Act, such vendor is a vendor falling within-

(i) Category A, in relation to any tax period which ended on or before 10 April 1994; and

(ii) any other Category, in relation to any tax period which ended on or before 10 March 1994, and who-

(aa) submits all returns in respect of value-added tax for all tax periods which ended on or before 31 October 1996, on or before the last day of the relief period; or

(bb) makes arrangements with the Commissioner during the relief period to submit such returns within six months after the last day of the relief period; (iii)

(vi) "relief period" means the period from 1 November 1996 until 28 February 1997; (vi)

(vii) "Sales Tax Acts" means the Sales Tax Act, 1978, read with section 85(2) of the Value-Added Tax Act, 1991, and any law of a former state or territory in terms of which a sales tax is or was leviable. (v)

(2) Any reference in this Act-

(a) to any tax contemplated in this Act shall be construed as including a reference to any similar tax imposed by a law of a former state or territory; and

(b) to any interest, penalty or additional tax contemplated in this Act shall be construed as including a reference to any similar interest, penalty or additional tax imposed by a law of a former state or territory.

CHAPTER I

APPLICATION PROCEDURES

Application for relief in respect of persons not registered or whose whereabouts were unknown

2. (1) Any person contemplated in paragraph (a) or (b) of the definition of-

(a) "qualifying taxpayer" in section 1 may, during the relief period, apply in writing to the Commissioner in such form as the Commissioner may prescribe, for the relief contemplated in section 5(1);

(b) "qualifying employer" in section 1 may, during the relief period, apply in writing to the Commissioner, in such form as the Commissioner may prescribe, for the relief contemplated in section 6(1); or

(c) "qualifying vendor" in section 1 may, during the relief period, apply in writing to the Commissioner, in such form as the Commissioner may prescribe, for the relief contemplated in section 7(1).

(2) Any application contemplated in subsection (1) shall be accompanied by a written undertaking by the person concerned that such person will-

(a) comply with such provisions of any law as relate to such person's liability for-

(i) normal tax in respect of the last two years of assessment which ended before 1 March 1996;

(ii) any employees' tax which became payable by such person in respect of all periods which ended on or before 31 October 1996, other than any tax contemplated in section 6(1)(a); or

(iii) any value-added tax which became payable by such person in respect of all tax periods which ended on or before 31 October 1996, other than any tax contemplated in section 7(1)(a),

as the case may be; and

(b) pay any tax contemplated in paragraph (a) which is due by such person-

(i) within a period of one year after the last day of the relief period; or

(ii) where such person has agreed to pay such tax within a shorter period, within such shorter period.

Deeming application for relief as result of disclosure of certain details

3. Any person contemplated in paragraph (c) of the definition of-

(a) "qualifying taxpayer" in section 1 shall be deemed to have applied for the relief contemplated in section 5(2) by reason of the disclosure of the details contemplated in that paragraph;

(b) "qualifying employer" in section 1 shall be deemed to have applied for the relief contemplated in section 6(2) by reason of the disclosure of the details contemplated in that paragraph; or

(c) "qualifying vendor" in section 1 shall be deemed to have applied for the relief contemplated in section 7(2) by reason of the disclosure of the details contemplated in that paragraph,

on written disclosure of the relevant details during the relief period, to the Commissioner.

Deeming application for relief in respect of interest, penalty and additional tax

4. Any person contemplated in paragraph (d) of the definition of-

(a) "qualifying taxpayer" in section 1 shall be deemed to have applied for the relief contemplated in section 5(3);

(b) "qualifying employer" in section 1 shall be deemed to have applied for the relief contemplated in section 6(3); or

(c) "qualifying vendor" in section 1 shall be deemed to have applied for the relief contemplated in section 7(3),

on submission, or the arrangement for the submission, of the relevant returns or declarations contemplated in the said paragraphs, respectively.

CHAPTER II

SCOPE OF RELIEF

Income tax

5. (1) Subject to sections 9 and 10, any person contemplated in paragraph (a) or (b) of the definition of "qualifying taxpayer" in section 1 who has applied for relief under section 2(1)(a), shall not be-

(a) liable for the payment of any normal tax due in respect of any year of assessment which ended on or before 28 February 1994;

(b) liable for the payment of any interest due in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in respect of the late payment or underpayment of any normal tax referred to in section 2(2)(a)(i), in so far as such interest is due in respect of a period ending not later than the last day of the relief period;

(c) liable for any penalty or additional tax in terms of the said Act, in respect of the non-payment or late payment of any normal tax referred to in paragraph (a) or (b); and

(d) subject to criminal prosecution for offences committed in relation to any normal tax referred to in paragraph (a) or (b).

(2) Subject to section 9, any person contemplated in paragraph (c) of the definition of "qualifying taxpayer" in section 1 who is in terms of section 3(a) deemed to have applied for relief, shall, in respect of any normal tax which has become payable as a result of the disclosure, as contemplated in that paragraph, of full and true details of any income, deduction or allowance, not be liable for any-

(a) interest in terms of the Income Tax Act, 1962, in respect of the non-payment of such normal tax; or

(b) penalty or additional tax in terms of the said Act, in respect of the non-payment of such normal tax,

in so far as such interest, penalty or additional tax is due in respect of a period ending not later than the last day of the relief period.

(3) Subject to section 9, any person contemplated in paragraph (d) of the definition of "qualifying taxpayer" in section 1, who is in terms of section 4(a) deemed to have applied for relief, shall not be liable for any interest, penalty or additional tax due in terms of the Income Tax Act, 1962, in respect of the late payment or underpayment of any normal tax in relation to any year of assessment which ended on or before 31 December 1994, arising from any details included by such person in any return of income in respect of any such year of assessment-

(a) which is submitted on or before the last day of the relief period; or

(b) for which the qualifying taxpayer has made arrangements as contemplated in paragraph (d)(ii) of the definition of "qualifying taxpayer" in section 1,

in so far as such interest, penalty or additional tax is due in respect of a period ending not later than the last day of the relief period.

Employees' tax

6. (1) Subject to sections 9 and 10, any person contemplated in paragraph (a) or (b) of the definition of "qualifying employer" in section 1 who has applied for relief under section 2(1)(b), shall not be-

(a) liable for the payment of any employees' tax which such person was required to deduct or withhold from remuneration paid by such person or which such person became liable to pay in respect of any period which ended on or before 28 February 1994, whether or not such employees' tax was in fact deducted or withheld by such person;

(b) liable for the payment of any interest due in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in respect of the late payment of any employees' tax referred to in section 2(2)(a)(ii), in so far as such interest is due in respect of a period ending not later than the last day of the relief period;

(c) liable for any penalty in terms of the said Act, in respect of the non-payment or late payment of any employees' tax referred to in paragraph (a) or (b); and

(d) subject to criminal prosecution for offences committed in relation to any employees' tax referred to in paragraph (a) or (b).

(2) Subject to section 9, any person contemplated in paragraph (c) of the definition of

qualifying employer" in section 1 who is in terms of section 3(b) deemed to have applied for relief, shall, in respect of any employees' tax which has become payable as a result of the disclosure, as contemplated in that paragraph, of full and true details of any amount of employees' tax required to be deducted or withheld from any remuneration, not be liable for any-

(a) interest in terms of the Income Tax Act, 1962, in respect of the non-payment of such employees' tax; or

(b) penalty in terms of the said Act, in respect of the non-payment of such employees' tax,

in so far as such interest or penalty is due in respect of a period ending not later than the last day of the relief period.

(3) Subject to section 9, any person contemplated in paragraph (d) of the definition of "qualifying employer" in section 1, who is in terms of section 4(b) deemed to have applied for relief, shall not be liable for any interest or penalty due in terms of the Income Tax Act, 1962, in respect of the late payment or underpayment of any employees' tax in relation to any period which ended on or before 28 February 1994, arising from any details included by such person in any declaration in respect of any such period-

(a) which is submitted on or before the last day of the relief period; or

(b) for which the qualifying employer has made arrangements as contemplated in paragraph (d)(ii) of the definition of "qualifying employer" in section 1,

in so far as such interest or penalty is due in respect of a period ending not later than the last day of the relief period.

Value-added tax

7. (1) Subject to sections 9 and 10, any person contemplated in paragraph (a) or (b) of the definition of "qualifying vendor" in section 1 who has applied for relief under section 2(1)(c), shall not be-

(a) liable for the payment of any value-added tax in respect of the supply of goods or services or imported services or on the importation of goods on or before 28 February 1994;

(b) liable for the payment of any interest due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), in respect of the late payment of any value-added tax referred to in section 2(2)(a)(iii), in so far as such interest is due in respect of a period ending not later than the last day of the relief period;

(c) liable for any penalty or additional tax in terms of the said Act, in respect of the non-payment or late payment of any value-added tax referred to in paragraph (a) or (b); and

(d) subject to criminal prosecution for offences committed in relation to any value-added tax referred to in paragraph (a) or (b).

(2) Subject to section 9, any person contemplated in paragraph (c) of the definition of "qualifying vendor" in section 1 who is in terms of section 3(c) deemed to have applied for relief, shall, in respect of any value-added tax which has become payable as a result of the disclosure, as contemplated in that paragraph, of full and true details of any calculation, not be liable for any-

(a) interest in terms of the Value-Added Tax Act, 1991, in respect of the non-payment of such value-added tax; or

(b) penalty or additional tax in terms of the said Act, in respect of the non-payment of such value-added tax,

in so far as such interest, penalty or additional tax is due in respect of a period ending not later than the last day of the relief period.

(3) Subject to section 9, any person contemplated in paragraph (d) of the definition of "qualifying vendor" in section 1, who is in terms of section 4(c) deemed to have applied for relief, shall not be liable for any interest, penalty or additional tax due in terms of the Value-Added Tax Act, 1991, in respect of the late payment or underpayment of any value-added tax where, for the purposes of section 27 of the said Act, such person is a vendor falling within-

(a) Category A, in relation to any tax period which ended on or before 10 April 1994; and

(b) any other Category, in relation to any tax period which ended on or before 10 March 1994,

arising from any details included by such person in any return in respect of any such tax period-

(i) which is submitted on or before the last day of the relief period; or

(ii) for which the qualifying vendor has made arrangements as contemplated in paragraph (d)(ii) of the definition of "qualifying vendor" in section 1,

in so far as such interest, penalty or additional tax is due in respect of a period ending not later than the last day of the relief period.

Sales tax

8. Subject to section 9, where any penalty is due in terms of the Sales Tax Acts in respect of any sales tax for which any person is held liable, such person shall not be liable for such penalty.

CHAPTER III

MISCELLANEOUS PROVISIONS

Non-qualifying amounts

9. Any relief contemplated in this Act shall not apply to any-

(a) tax, interest, penalty or additional tax which was paid by any person before 1 November 1996; or

(b) tax which, where any person is a person contemplated in paragraph (a) or (b) of the definition of "qualifying employer", "qualifying taxpayer" or "qualifying vendor", respectively, in section 1, is payable or becomes payable in consequence of-

(i) any return, declaration or information furnished by any person or any representative of such person to the Commissioner before 19 July 1995; or

(ii) an investigation into the affairs of such person commenced by the Commissioner before 1 November 1996 and of which such person or any representative of such person was aware.

Withdrawal of relief

10. Any relief granted to a person contemplated in paragraph (a) or (b) of the definition of "qualifying employer", "qualifying taxpayer" or "qualifying vendor" in section 1, as the case may be, shall be withdrawn by the Commissioner if such person-

(a) wilfully makes any default in complying with the undertaking referred to in section 2(2) in so far as it relates to the compliance of any law as contemplated in section 2(2)(a); or

(b) without reasonable grounds, fails to pay any tax contemplated in section 2(2)(a) which is due by such person, within the periods contemplated in section 2(2)(b).

Short title and commencement

11. This Act shall be called the *Final Relief on Tax, Interest, Penalty and Additional Tax Act, 1996*, and shall be deemed to have come into operation on 1 November 1996.