



Tax Amnesty

Remission of interest and penalties

Background

In the 2018/19 Budget speech presented by Hon. Dr. Philip I. Mpango, the Minister for Finance and Planning, the government declared its intention to give a full amnesty to tax payers.

The move followed the directive given by the President of Tanzania, H.E. John Pombe Joseph Magufuli in response to the business community's concerns over the burden of accumulated tax arrears that include penalties and interest.

Following the announcement during the budget reading, some parts of the Tax Administration Act, 2015 were amended via the Finance Act 2018. Among other changes, the amendments gave power to the Finance Minister to issue regulations governing the Commissioner's power to waive all or part of interest and penalties resulting from non-compliance.

On 11 July 2018, at a press conference, the Commissioner General, Mr. Charles E. Kichere, announced the amnesty eligibility guidelines and gave an overview of the procedures that need to be followed to benefit from the amnesty.

Tax Administration (Remission of Interest and Penalty) Order, 2018.

Persons qualifying for amnesty

The order indicates that eligible taxpayers may enjoy a 100% waiver of interest and penalties imposed on outstanding taxes. However, when granted the waiver, taxpayers will be expected to pay the outstanding principal tax, in full, not later than 30 June 2019. Taxpayers eligible for the amnesty include:

- Businesses that have filed their tax returns but have not paid the tax due;
- Those who have neither filed their tax returns nor paid the tax due;
- Those who have not applied for Taxpayer Identification Number (TIN) or any required registration including Value Added Registration Number (VRN);
- Those who have filed objections with the Commissioner General of the Tanzania Revenue Authority; or
- Those who have pending cases before the Tax Revenue Appeals Board (TRAB), the Tax Revenue Appeals Tribunal (TRAT) and the Court of Appeal of Tanzania.



Excluded persons

The following taxpayers are excluded from the amnesty:

- Businesses that have already paid the eligible taxes;
- Those with ongoing tax audits or investigations by the Commissioner General;
- Those convicted of fraud by the court regarding the eligible taxes;
- Those convicted of transnational organized crime including money laundering, human trafficking, poaching, and economic sabotage, corruption, drug trafficking or involvement in terrorism; and
- Those with assessments resulting from Electronic Fiscal Devices (EFD) offences or other compounded offences and assessments emanating from offences involving fraud.

Eligible Taxes

The order established that all taxes, levies and duties imposed by the tax laws administered by the Tanzania Revenue Authority (the TRA) qualify for amnesty except:

- Customs and excise duties under the East Africa Community Customs and Management Act, 2004 (EACCMA) and
- Taxes, levies, duties or fees collected on behalf of local government authorities, other institutions or agencies arising out of non-tax laws administered by the TRA.

Actions to take

The application for waiver of interest or penalty can be filed by the taxpayer or a duly authorized representative in the manner described below:

- The application should be made in the prescribed form i.e. form ITX207.01.E;
- It should state the amount of principal tax payable;
- The application should indicate the interest or penalty to be remitted;
- It should provide further information as specified in the prescribed form.

The application should be submitted to the TRA on or before 30 November 2018. The Commissioner General will review the application within 30 days from the date of receipt of the application.

Settlement Agreement

An eligible taxpayer granted remission should enter into a settlement agreement of the principal tax with the Commissioner General. The settlement terms may vary, however, the full payment of the principal tax should be made by 30 June 2019. Failure to abide by the terms of the settlement agreement may result in cancellation of the remission; requiring payment of the principal tax, interest and penalty.

The settlement agreement shall include the following:

- Material facts of the default on which the remission application is based;
- The total amount payable by the taxpayer prior to the granting of the remission; separately indicating principal tax, interest and penalties;
- Payment arrangements and due dates; and
- The commitment of the Commissioner General and the taxpayer to comply with the conditions of the settlement agreement.

An executed settlement agreement shall be conclusive evidence that the tax liability has been agreed and that the 100% waiver has been granted.

Retraction of the 100% waiver

Where a taxpayer who has been granted with a remission under the Order fails to implement any of the terms of the settlement agreement, the Commissioner General shall rescind the settlement agreement and proceed to demand the outstanding tax liability as if no remission was granted.

When the settlement agreement is concluded based on fraudulent information, the eligible taxpayer shall be liable to the full tax liability and an additional penalty as provided for under the Tax Administration Act, 2015.

Taking an advantage of the amnesty

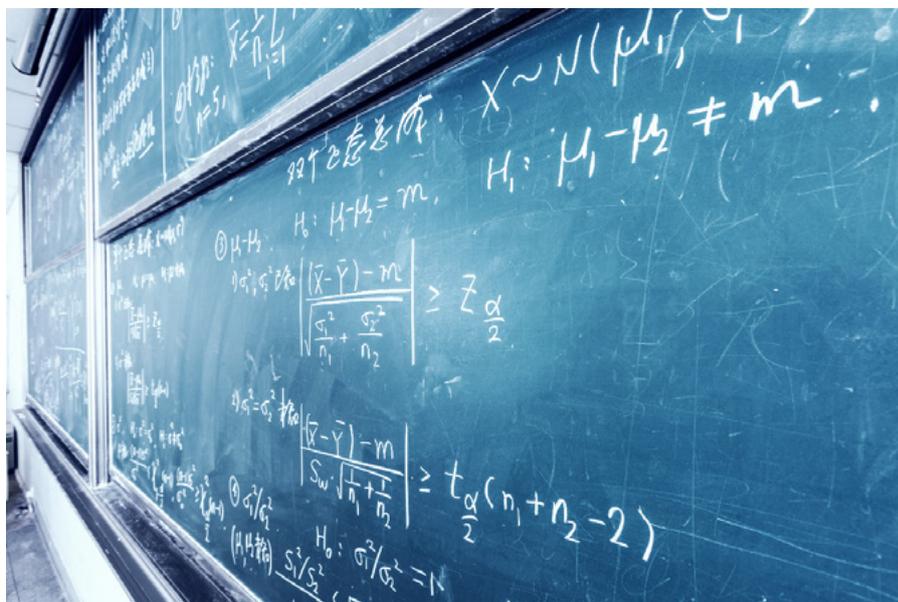
Businesses should consider carrying out an assessment of tax compliance status in order to identify any areas of non-compliance for all eligible taxes administered by the TRA – e.g. income tax, VAT, withholding tax, payroll taxes etc.

In view of the limited time and the need to get it right, it is important to conduct a review of tax affairs to identify non-compliant areas followed by a detailed quantification exercise on the non-compliant areas identified.

How can Deloitte assist?

Deloitte can assist you with the following services:

- Perform a high level or comprehensive review of tax affairs to identify the areas of exposure;
- If high level review is preferred, depending on the outcome of the review, a comprehensive tax health check can be done;
- Quantification of principle amounts, interests and penalties resulting from non compliance;
- Preparing and filing of outstanding tax returns with the TRA;
- Assist with the tax amnesty application process;
- Follow – up on the response to the tax amnesty application; and
- Liaise with the TRA for any additional information or queries.



Frequently Asked Questions

What is the time limit for a taxpayer to disclose non-compliance?

As far as the tax amnesty order is concerned, there is no time limit for disclosure; however, there is a time limit for applying for the amnesty i.e. 30 November 2018.

Is tax amnesty applicable to Zanzibar?

The tax amnesty order is applicable to taxes, levies and duties arising out of tax laws administered by the TRA; therefore it is applicable in Zanzibar for income taxes administered by the TRA.

If a taxpayer withdraws an objection or an appeal to pursue tax amnesty and the application is unsuccessful, can the taxpayer proceed with their objection or appeal withdrawn earlier?

The taxpayer may apply for the amnesty before withdrawing the case at either objection or appeal stage. However, after the signing of settlement agreement, the taxpayer will be required to drop the case without any future intent to pursue. As the tax amnesty application is a voluntary exercise, the taxpayer should make an in depth cost vs benefit analysis before embarking on the application.

If a taxpayer files a tax return(s) to comply with the tax laws but there is no principal tax payable, can the Commissioner General waive the late filing penalty if the taxpayer applies for tax amnesty?

Yes, the Commissioner General may still waive the penalties even if there is no principal tax payable.

If a taxpayer did a voluntary disclosure before the amnesty order and is currently making payments of the amount disclosed but have also applied for a waiver, can they use an amnesty window?

Yes, they can utilize the tax amnesty window.

If the taxpayer has started making payments of part of the eligible taxes pursuant to an assessment, can he qualify to apply for the amnesty?

Yes, if they have made a partial payment of the tax due, they can apply the tax amnesty requesting the waiver of interest and penalty. If the application is successful, the amount already paid should be deducted from the principal amount only. However, if the amount of tax liability has been paid in full, the amnesty is not applicable.

If a taxpayer has several objections filed with the TRA that are yet to be determined, or has pending appeals at the Tax Revenue Board, Tribunal or at the Court of Appeals, can they withdraw some of the cases and pursue the tax amnesty, or is it necessary that all cases are withdrawn?

Tax amnesty is applicable separately for each tax assessment/ tax liability. Thus, it is possible for the taxpayer to withdraw some of the cases and apply for tax amnesty, leaving the rest for determination.

Does the amnesty cover the Skills and Development Levy (SDL)?

Yes, the amnesty covers SDL.

Can the TRA use the amnesty settlement agreement as precedence in the future?

The agreement reached under the amnesty avenue does not set precedence for the future as the taxpayers' statutory right to object or appeal to an assessment when they are aggrieved remains intact.

Is the remission of interest and penalties under the amnesty order automatic or is it upon the Commissioner's discretion?

Once the taxpayer meet the eligibility requirements, the amnesty is automatic and 100% of the amount of interest and penalties payable is remitted.

For ongoing audit cases, if concluded (final audit findings and assessment(s) have been issued) before the amnesty window is closed, can one apply for amnesty and not object? If yes, can one apply for only few taxes and object the rest or it must be for all taxes under audit?

The order applies to outstanding tax liabilities up to 30 June 2018. Therefore, a taxpayer cannot apply for amnesty for ongoing tax audits even if a case was finalized before the amnesty window closed. However, if prior to 1 July 2018, the taxpayer had been assessed with a tax liability subject to amendments made after 30 June 2018 and falls within the amnesty period, the taxpayer can apply for amnesty.

As stated above, each assessment that has established a tax liability will be determined separately as far as the amnesty is concerned.

What are the procedures for submitting a tax amnesty application?

The applicant or their representative should fill in the prescribed form ITX207.01E. The form is available on the TRA website, www.tra.go.tz or at any office of the TRA.

- The application should be submitted to the Commissioner for Large Taxpayers or Regional Manager/ District Manager of the Taxpayers location;

- The submission should be made on or before 30 November 2018. Applications made afterwards will not be considered; and
- The application should be accompanied by the following documents:
 - Cover letter showing a separated amounts of the principal, interest and penalty as well as the proposed payment period of the principal amount;
 - Disclosure return (amnesty return for potential tax payers); and
 - Checklist for application of remission of interest and penalty.

What happens after the submission?

After submitting the application to the TRA, the Commissioner shall examine the application within 14 days. The following will be reviewed:

- Eligibility of the person submitting the application;
- Whether the application is regarding the eligible taxes;
- If the taxpayer has a pending tax objection or appeal case;
- Sufficient commitment to pay the whole principal tax within time required; and
- If the applicant qualifies for the remission sought.

Where the Commissioner General approves, he shall notify the applicant in writing within 30 days from the date of the application; and in case of refusal, provide reasons for refusal.

Can tax refunds be used to settle the disclosed tax liability?

Refunds may be used given that all the procedures for review and approval for the refund have been followed. However, the TRA encourages taxpayers to make principal payments agreed under the amnesty avenue and leaves room for the refund process to run its own course.

What are the necessary contents of the settlement agreement?

The settlement agreement shall contain the following:

- The material facts of the default on which the remission application is based;
- Amount payable; which must separately reflect the principal tax, interest and penalty payable;
- Payment arrangements and due dates; and
- Both the Commissioner and the eligible person.

Once signed, the agreement shall constitute a binding contract between the parties.

What are the consequences of not honoring the settlement agreement?

If following the settlement agreement, it is established that the applicant failed to disclose a matter that was material for the purposes of making a valid disclosure, the Commissioner General may:

- Withdraw any relief that has been granted;
- Regard any amount paid in terms of the settlement agreement to constitute part payment of any outstanding tax debt in respect of the relevant default; and
- Pursue prosecution for tax offences arising from the default.



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