

# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 496

Pretoria, 13 October 2006  
Oktober

**No. 29299**

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## GOVERNMENT NOTICE

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### FINANCIAL INTELLIGENCE CENTRE

No. 1035

13 October 2006

#### THIRD REPORTING EXEMPTION IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001

By virtue of the powers vested in me by section 74 of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001, "the Act"), I, Trevor Andrew Manuel, Minister of Finance, hereby make the exemption set out in the Schedule hereto, with immediate effect.

#### SCHEDULE

Every person who carries on a business or is in charge of or manages a business or who is employed by a business and in that capacity assists or advises a client in connection with an application or prospective application for amnesty in terms of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No 9 of 2006) is exempt from compliance with the provisions of section 29 (1) (b) (iv) of the Act, in respect of information disclosed to such a person for the purpose of obtaining advice or assistance in connection with the application or prospective application for amnesty referred to above, whether such an application is in fact made by or on behalf of the client or not.

**EXPLANATORY MEMORANDUM TO THE THIRD REPORTING  
EXEMPTION IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE  
ACT, 2001**

1. The exemption from the obligations of section 29 (1) (b) (iv) of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001, hereafter "the Act") is aimed at facilitating the role of tax advisers in assisting their clients to apply for the small business tax amnesty provided for in the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No 9 of 2006, hereafter "the Small Business Tax Amnesty Act").
2. The exemption relates to section 29 (1) (b) (iv) of the Act which covers a transaction or series of transactions to which a business is a party and which "may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service".
3. The exemption applies to tax advisers by operation of law and does not have to be applied for. The exemption applies to a specific category of advisers namely those who render assistance or advice to clients in connection with the amnesty in terms of the Small Business Tax Amnesty Act.
4. The exemption applies to advisers referred to in paragraph 3 whether the client in fact applies for the amnesty or not.
5. The exemption does not absolve any person from liability for their own involvement in unlawful activity such as tax evasion, since that liability does not arise from the provisions of the Act.
6. The amnesty in terms of the Small Business Tax Amnesty Act may become relevant to tax advisers in one of three scenarios:

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- An owner of a small business may approach a tax adviser to establish whether he or she qualifies for the small business tax amnesty and to obtain assistance in submitting his or her applications to the Commissioner of the South African Revenue Service. In these circumstances this exemption exempts tax advisers from having to report information which the person may disclose concerning past failures to comply with tax obligations relating to the business in question.
  - An owner of a small business may approach a tax adviser to obtain generic tax advice without referring specifically to the small business tax amnesty. During the consultation it may become apparent to the tax adviser that the person has previously failed to comply with certain tax obligations pertaining to the business in question. The tax adviser would have to advise the person of the small business tax amnesty and recommend that the person apply for the amnesty. In these circumstances this exemption exempts tax advisers from having to report information which the person may disclose concerning past failures to comply with tax obligations relating to the business in question. However, should the tax adviser not advise the person of the small business tax amnesty, or fail to recommend that the person apply for the amnesty, the information disclosed to the adviser would not be regarded as being "disclosed for the purpose of obtaining advice or assistance in connection with" an application or prospective application for amnesty. In these circumstances the exemption does not apply.
  - An owner of a small business may approach a tax adviser in circumstances which lead the adviser to suspect that his or her services will be abused to conceive of, carry out or perpetuate a scheme to conceal the source or the nature of proceeds of unlawful activities or to evade tax. In these circumstances the exemption does not apply.
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