Tax Amnesty: Trends and Effectiveness

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1 Tax Amnesty overview

Overview of tax amnesties

- What is a tax amnesty?

A **limited-time offer** by the government to **a specified group** of taxpayers to pay **a defined amount,** in exchange for **forgiveness** of a tax liability (including interest and penalties), relating to a past period, as well as freedom from prosecution.

- Amnesty can take two forms:

a) Financial: - Reduction or waiver of tax liabilities (including principal tax, penalties and interest);

b) Legal: - Freedom from prosecution (fines and imprisonment)

Overview of tax amnesties

- Why do governments implement tax amnesties:

  a) Increase short term tax collections;

  b) To bring more taxpayers into the tax bracket especially in countries where the informal sector/underground economy is large

  c) Allow delinquent taxpayers to come forth on their own volition - tax authorities do not have adequate resources to audit all taxpayers

  d) Alleviate the burden of penalties and interest which is often the reason for reluctance by taxpayers to self-declare

  e) Allow the expeditious conclusion of tax audits

  f) Provide a mechanism for return of untaxed wealth stashed offshore

Overview of tax amnesties

- Downsides of tax amnesty programs:

  a) Implicit admission by government that it is unable to enforce the tax statute;

  b) Often an indication of anticipated budgetary pressure with the government expecting difficulties in meeting its revenue projections due to domestic or international pressure;

  c) Often seen as a reward for non-compliance - Honest taxpayers will see a tax amnesty as unfair when tax evaders escape without punishment.

A federal amnesty program could have a substantial negative effect on long term revenues. A taxpayer amnesty, even when described as a 'one-time' program, would lead taxpayers to wonder if it might be repeated and thus question the importance of continued compliance with the tax laws… an amnesty program would gamble with our tax system's most important asset, the willingness of taxpayers to obey the law. This willingness rests in large part on taxpayers belief that non-compliance will not be tolerated.

Dennis Ross Deputy Assistant Secretary to the US Treasury.

Overview of tax amnesties

Why do people evade tax? - Conscious cost- benefit trade-off calculation:

a) Direct penalties for tax evasion (financial, civil, and criminal);

b) Indirect penalties (psychological, reputational costs);

c) Probability of detection (amount of resources devoted to tax administration); and

d) Benefits from tax evasion (financial savings; time savings due to complex tax system)

Who is likely to take up a tax amnesty:

- Persons driven by fear and or guilt over past noncompliance

  a) Fear – apprehension over possible future discovery and the consequent economic penalties (imprisonment) or social consequences including adverse publicity

  b) Guilt – only applies to persons who believe that they have a moral obligation to pay taxes

- To be successful, a tax amnesty should be accompanied by a shift in the tax evasion cost-benefit matrix in favour of the revenue authority – otherwise the gains will be short-term.

Tax Amnesty Effectiveness

- The government must first set out the expected outcomes of the amnesty.

  a) The expected additional revenues collections (amnesty collections adjusted for what would have been collected using the normal compliance programs);

  b) The cost of the program – publicity, administration, repercussions arising from full disclosure of tax affairs;

  c) The amnesty outcomes are measured against the set expectations to measure the effectiveness of the amnesty.

     - How many new taxpayers came into the program?
     - How did the income and tax declarations hold up post the amnesty?

Tax Amnesty Examples:

- In 2017 Indonesia concluded a 9 month amnesty program: over 900,000 taxpayers volunteered over USD 345 billion in previously undeclared assets
- 43,000 taxpayers participated in South Africa's 2003 amnesty, declaring assets in excess of USD 500m
- In Latin America, Brazil and Argentina had asset declarations of USD 16B and USD 100B respectively
- Other countries which have implemented tax amnesty programs include Australia (2014), Ireland (1993), Spain (2012), Chile (2015), Italy (2009), Nigeria (2017), Turkey (2016) and South Africa (2017)

2017 Indonesia tax Amnesty

Overview of the Indonesia Tax Amnesty:

- The amnesty covered periods up to 31 December 2015
- Reporting period of 9 months (1July 2016 – 31Mar 2017)
- Repatriated assets to be put in select investments (government bonds, infrastructure projects)
- Repatriated assets to be retained in country for not less than three years and onshore assets to be retained in country for three years

Assets	0-3mnth	4-6mnth	7-9mnth
Offshore – no repatriation	4%	6%	10%
Offshore - repatriated	2%	3%	5%
Onshore assets	2%	3%	5%

Small taxpayers	Assets <$720K	Assets >$720K
Income <$350,000	0.5%	2%

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2017 Indonesia tax Amnesty

The results:

- 965,983 persons joined the scheme (less than 200,000 were new taxpayers):
  - Only 35 million out of an adult population of 165million are registered taxpayers
  - Only 12 million out of the registered taxpayers pay tax

Assets	Target ($B)	Actual ($B)	Success rate
Redemption payments	11.73	8.1	69.05%
Declared assets	284	345	121.48%
Repatriated assets	71	10.45	14.71%

- Declared assets were approximately 40% of the Indonesia GDP, with 25% of the assets coming from onshore sources
- Low repatriation attributed to high local tax rates, limited investment opportunities, high risk economic environment
- Tax revenues expected to grow 10% Y/Y on year from previous 7% Y/Y
- Tax to GDP ratio of 11% (Kenya 18.2% in 2017)

Observations/trends from amnesties

- Many of the amnesties over the past century did not meet the expectation;
- Repeated amnesties often increase non-compliance – Complaint taxpayers will not pay taxes in anticipation of a future amnesty while delinquent one will hold back expecting a better deal;
- Short-term increases in revenue often followed with lower collections in subsequent years;
- Frequent amnesties point to a weakness in the tax administration which can increase non-compliance.

2 Tax amnesties in Kenya

Tax Amnesty in Kenya

Year	Period covered	Waiver on
2004*	Years ending 31 Dec. 2003	Penalty and interest
2010	Years ending 31 Dec. 2010	Income from outside Kenya
2016	2013 & prior years	Amnesty on rental income: • 2013 & prior – Principal, INT & PENLT • 2014/2015 – INT & PENLT
2016	2014 & 2015	Penalty & interest on rental income
2017	Years ending 2019	Assets held outside Kenya
2020	Five years ending June 2020	Penalty and interest

*2004 amnesty reported to have raised KES 4.41Billion from 4,853 applications (KES 983,716 per application)

2017 Tax amnesty on overseas assets

- The amnesty under Section 37B of the Tax Procedures Act (TPA) covered principal tax, penalties and interest on taxable income for the years 2016 and prior earned outside Kenya together with assets procured using the undeclared income.
- The amnesty was a temporary measure that ended on 30 June 2019.
- Requirements:
  a) Taxpayer to provide proof of repatriation of funds to qualify for amnesty.
  b) Assets covered included bank deposits and properties situated outside Kenya but acquired/funded from income accruing from Kenya.
  c) Funds had to be repatriated before 30 June 2019 with 5 year extension for repatriation but with a penalty of 10%.
  d) Persons under audit not eligible for the amnesty.
- Application for amnesty done through *i*Tax and certificate issued upon approval.

Assessment of the amnesty

- The main success was in supporting the balance of payments position through foreign currency inflows;
- There were no restrictions on repatriation of the funds upon receipt of the amnesty – there are concerns that most of the funds have since been repatriated out of country;
- There was no consideration for those who wished to declare but could not repatriate for various reasons – Property holdings, shares etc
- Government was non-committal on waiver from prosecution for illegally acquired funds amnesty;
- Long-term benefit in terms of increased compliance and tax collections not clear.

3 Voluntary Tax Disclosure Programme

Introduction of VTDP

- The **Finance Act, 2020** established the Voluntary Tax Disclosure Programme (VTDP) which will run for a period of three years with effect from **1 January, 2021**

- A taxpayer/ person who discloses tax liabilities that accrued within a period of five years prior to 1 July 2020 to the Commissioner will be eligible for waiver of penalties and interest on the tax disclosed

- All taxpayers/ persons are eligible for the VTDP with the exception of those who:

  a. Are under audit, investigation or party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or

  b. Have been notified of a pending audit or investigation by the Commissioner.

How the programme will work

A taxpayer will be entitled to waiver of penalties and interest as follows:

Narration	Rate of waiver	Caveat
Disclosure made and arrears paid in 2021	100%	Only granted where the Commissioner is satisfied with the facts disclosed in the application
Disclosure made and arrears paid in 2022	50%	
Disclosure made and arrears paid in 2023	25%	

Why consider the amnesty:

- Peace of mind – helps to close out tax periods that are still open to audit;
- Automatic waiver of penalties and interest;
- Option for instalment payment of the principal tax arrears;

Critical success factors

- Performance against expectations – What does the KRA expect to achieve;
- What measures are in place to ensure future compliance:
  a) Deterrence measures: – Automation, enhanced whistleblower program, ambitious audit program, overhaul of penalty and interest regime, prosecution;
  b) Administrative support to ensure the process is seamless;
- Addressing taxpayer concerns on:
  a) Exclusion of persons who have received notices of intention to audit;
  b) Publicity especially on the requirements to get 100% waiver;
  c) potential criminal investigations on ill-gotten wealth;
  d) potential classification of taxpayers as high risk;
  e) revenue authority not sticking to the terms of the amnesty

Reducing the need for amnesties

- Strengthening the legal framework for tax administration
  a) Remove legal obstacles for tax administration access to information;
  b) Legalize instalment payment regime for taxpayers with temporary cashflow constraints;
  c) Have a reasonable penalty regime;
  d) Provide the revenue authority with greater enforcement powers;
  e) Fast-tracking of cases through the court system
- Tax Administrators requirements:
  a) Maintain an accurate and complete tax database;
  b) Strengthen audit function – with emphasis on audit quality;
  c) Ease the tax compliance burden

Q&A