

ANTICIPATED EFFECTS OF THE 2021 TAX AMNESTY

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EXECUTIVE SUMMARY

The 2021 tax amnesty is anticipated to result in the waiver of tax interest and penalties of P4.05 billion in exchange for payment of principal tax debts of around P826m. The tax amnesty will also mean a reduction in administrative cost of keeping defaulters' records, litigation and debt follow-ups, which is expected to free-up the Botswana Unified Revenue Service (BURS) resources to collect more revenue. BURS has always anticipated to waive tax penalties and interest, premised on the difficulties it experienced in trying to collect the debts. The impact of the COVID-19 pandemic has worsened the situation as more taxpayers find themselves with unbearable debts due to hefty tax interest and penalties. This is the first tax amnesty in 20 years and its uptake by delinquent taxpayers is expected to be around 70%.



1. INTRODUCTION

This paper seeks to examine the possible effects of the 2021 tax amnesty on tax collections as well as its impact on taxpayers. It also seeks to analyse the background of events leading to the formulation of the amnesty and how it was implemented. Given that COVID-19 has wrecked the economy, the tax amnesty certainly came at the right time. In this paper, any reference to a financial year or period shall, unless explicitly stated, be to the BURS' year which runs from 1 April to 31 March of the subsequent year. The phrases, 'principal tax' and, 'tax interest and penalties,' shall respectively mean, 'tax debt determined before the addition of any charges,' and, 'late-payment tax interest as well as ensuing penalties.'

1.1 Tax amnesty principle

A tax amnesty is a temporary window given to taxpayers by tax authorities to make good their tax affairs without facing the full wrath of the law. It is usually characterized by waiver of taxes and forgiveness of past non-compliance.

Scholarly, experts define tax amnesty as a one-time program that lasts for a short period of time that waives the tax liability (including the interest and penalties) and both civil and criminal penalties of the previous unpaid tax to non-filers or taxpayers who have not paid the correct amount of tax (Le Borgne and Baer, 2008). According to the Wikipedia, a tax amnesty may be defined as a limited time opportunity for 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 previous tax period or periods without fear of criminal prosecution. Botswana has not offered any tax amnesty in the past 20 years and this will be the first in 2 decades. The 2021 tax amnesty was mooted by the then Minister of Finance & Economic Development, Dr T Matsheka when presenting the 2021-2022 national budget on 1 February 2021 in which he stated that,

'In an effort to further ease the burden on taxpayers, Government has taken a decision, Mr. Speaker, to offer a tax amnesty during the coming tax year. In this regard, taxpayers with outstanding tax amounts will be granted an opportunity to clear the principal amount owed in exchange for write off of interests and penalties charged during the previous tax periods without fear of prosecution. I wish to encourage companies and individuals to take advantage of this dispensation to clear their arrears to be in good standing. In addition, by clearing their tax arrears, companies will be in a position to participate in public procurement, which requires tax clearance from the Botswana Unified Revenue Service.'

Tax penalties can be as high as 200% of the principal tax whilst annual interest averages to 19.56%. Combined, these two make tax debts grow prodigiously and in most instances, they financially choke the taxpayer. As a result of the stated astronomical growth of the tax bills, most taxpayers fail to honour their tax obligations. BURS also then struggles to collect as taxpayers wouldn't have the capacity to pay the tax.

1.2 BURS sentiments on tax arrears

BURS has always hinted on the growing need for a tax amnesty in its annual reports dating back as far as 2016. The impact of the COVID- 19 pandemic worsened the situation as more taxpayers found it harder to fulfill their obligations as a result of impeded economic activity that characterized the 2020 to 2021 tax year. Even before the pandemic, arrears continued on an upward trend, with the bulk being interest and penalty. Below are some of the related sentiments released by BURS between 2016 and 2019

Table 1: Sentiments on tax arrears

Date	Related Statement
2016 Annual Report	Tax Arrears – Bad Debt The existence of tax arrears also presents a major challenge as a significant proportion of the arrears are very old and difficult to collect as some of the debtors cannot be traced. Previous attempts to recover the outstanding debt have been beset by a number of challenges including untraceable debtors, unavailable supporting records and taxpayers inability to pay. As a result, there may be need to consider a blanket write off of debts over 5 years of age.
2017 Annual Report	Tax Arrears – Bad Debt In spite of efforts made to reduce the arrears through recoveries and remissions, the total outstanding arrears as at 31st March 2017 stood at P2, 694,440,334. The growth in the debt is mainly attributed to interest and penalties which account for 66% of the arrears whilst the principal tax outstanding is 34%. Efforts will continue to be made to reduce the arrears in the next financial year.
2018 Annual Report	Tax Arrears – Increasing Penalties In spite of efforts to reduce the arrears through recoveries and remissions, the total outstanding arrears as at 31st March 2018 stood at P3,287,089,207 which was an increase of 21% over the total outstanding as at 31st March 2017 which was P2,694,440,334. The outstanding balance indicates that the interest and penalties account for 66% of the arrears whilst the principal tax outstanding is 34%. The bulk of the arrears are charges for late payment of tax and late filing of returns.
2019 Annual Report	Tax Arrears – Bad Debt Even though efforts were made during the year to reduce the arrears through recoveries and remissions, the total outstanding arrears as at 31st March 2019 stood at P3,383,138,139 which was an increase of 2.9% over the total outstanding as at 31st March 2018 which was P3,287,089,207. The outstanding balance indicates that the interest and penalties accounted for 72.7% of the arrears whilst the principal tax outstanding was 27.3%.

Source: BURS Annual Tax Reports 2016-2019

1.3 2021 tax amnesty law

As a follow up to the budget statement and the sentiments raised by BURS, the Ministry of Finance & Economic Development (MOFED) through statutory instruments (SI) No. 52 and 53 of 2021 published on 8 June 2021, enacted the 2021 tax amnesty laws. The said SIs took effect as from 1 July 2021 and apply to tax debts (VAT & Income Tax) which arose before 1 July 2021. The amnesty would only be available to taxpayers if they clear their principal tax debts. A further pronouncement, with the specifications of the tax amnesty was made by BURS on 14 June 2021.

According to the SIs, the tax amnesty will run from 1 July to 31 December 2021 pertaining to debts which arose in periods to 30 June 2021. This means that any tax interest and penalties arising on or after 1 July 2021 will not be eligible for the tax amnesty. The scheme will cover Income tax, including corporate tax, personal tax, taxes collected under the Pay As You Earn system, Other-withholding taxes as well as the Value Added Tax. It is against this background that this paper seeks to quantify and determine possible effects of the 2021 tax amnesty.



2. THE 2021 AMNESTY

According to the tax amnesty laws, whilst the amnesty will be extended to various categories of taxpayers, it will not benefit those who may otherwise be eligible persons but have paid all of their tax liability including the related penalties and interest. In other words, only taxpayers who still owe tax interest and penalties will be able to apply for the tax waivers.

Eligible persons include those who have outstanding principal tax debts that have a relevant penalty and/or interest liability and those who have filed a tax return but have not paid the whole or part of the tax due under that return. It will also cover those who may not have had a principal tax liability but were charged penalties or interest. Taxpayers who have outstanding returns may file those returns during the amnesty period and any penalties or interest will be forgiven upon payment of the principal tax in the above-mentioned 6 months to 31 December 2021.

A legal person who should be registered but has not registered for any of the relevant taxes may do so during the amnesty period and will not be charged penalties and interest for the late registration. However, those who have previously been convicted of a criminal offence under any of the relevant revenue laws, as well as those who have been convicted of transnational organized crime including money laundering, human trafficking and economic sabotage shall not be eligible for the amnesty. During the amnesty period, BURS may commence an audit or investigation at any time but the impacted taxpayer may still benefit from the amnesty when they take all actions necessary to enjoy the tax dispensation. BURS may also revise an assessment at any time and where such assessment gives rise to additional tax, the tax will commence to accrue interest at the appropriate time. Cases before the Board of Adjudicators, High Court or Court of Appeal are also eligible for the waiver, as long as the principal debt is paid. An eligible person may pay the amount in dispute and enjoy relief under the amnesty and may withdraw the matter from the courts.

3. ANTICIPATED EFFECTS

3.1 Tax waivers to be +/- P4.05 billion

To encourage voluntary tax compliance and lessen the burden of tax penalties and interest on taxpayers, BURS will have to forego some revenue. It could be argued that BURS has nothing to lose as the bulk of the tax debts had become too onerous for taxpayers to bear. The tax amnesty is akin to instances where a company writes off debts which it deems irrecoverable. In order to determine how much BURS may waive as principal tax, there is need to project the total tax debt as at 31 March 2021 and then factor in the 3 months from 1st

April 2021 to 30 June 2021 which is also covered by the tax amnesty.

The table below shows the composition of principal tax juxtaposed with interest and penalties for the 2016 -2019 years per data released through the BURS annual reports. It is patent from the said figures that interest & penalties form the bulk of the tax arrears, rising from 64% in 2016 to 72,7 % by the end of the 2019 tax year. Whilst the 2020 and 2021 BURS annual reports are not yet publicly available, it is almost given that interest and penalty debts will continue on an upward trajectory, considering the fact that COVID-19 has ravaged the world and local economy. This will certainly result in a spike in debts, tax arrears included.

Tax Period	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021
Currency	BWP – P000	BWP – P000	BWP – P000	BW – P000	BWP – P000	BWP – P000
Total tax debt	2,235,581	2,694,440	3,287,089	3,383,138	4,127,428	6,965,035
% of interest + penalties	64%	66%	66%	72.70%	75.00%	83.00%
Interest & penalties	1,430,772	1,778,330	2,169,479	2,459,541	3,095,571	5,780,979
Principal tax debt	804,809	916,110	1,117,610	923,597	1,031,857	1,184,056
% increase in debt	n/a	21%	22%	3%	22%	35%
Tax waiver from amnesty	n/a	n/a	n/a	n/a	n/a	4 046 685
Source ref	*1	*1	*1	*1	*2	*2

Source: *1: BURS Annual Reports 2016-2019 *2: Our estimate

By default, BURS will waive tax interest and penalties due to it as tax losses are an integral part of any tax amnesty. Based on our analysis, we expect taxpayer debts to hover around P 6.97bn as at 30 June 2021, P5.78bn of this being tax interest and penalties whilst P1.18bn is allocable to principal tax debt. Factoring in the effects of COVID-19 on taxpayers as well as the financial attractiveness of tax waivers, we expect at least 70% of tax debtors to clear their principal tax debts, which points to the fact that BURS may waive around P 4.05bn in tax interest and penalties. BURS could therefore realise a rise in principal tax payments of P0.826bn, being 70% of the above-stated P1.18bn.

It would be too optimistic to expect all delinquent taxpayers to clear their principal tax debts as some will be impaired by various reasons, some of which include the following: insolvency, untraceable taxpayers, intentional defaulters, deregistration of companies for failure to reregister with CIPA and the negative financial impact of COVID-19. BURS has also in the past hinted that its efforts to collect these debts were not fruitful. It is hoped, however, that the tax amnesty will arouse most taxpayers' interest to clear their tax arrears, in anticipation of waivers of tax interest and penalties..

3.2 Reduction in Collection Costs

The tax amnesty is likely to benefit BURS in two ways, the first being the immediate short run increases in tax revenues (i.e. principal tax to be paid before waiver of interest and penalties) as well as anticipated post-amnesty revenue increases. There is no doubt that this exercise will allow BURS to reduce its administrative costs of debt collection and curtail litigation costs associated with unpaid taxes, among other positives.

3.3 Induced tax compliance

We also anticipate that taxpayers who previously had not paid their tax dues will be successfully brought back into the tax-net as they are likely to compensate tax forgiveness with future voluntary tax compliance. These taxpayers may wish to correct previous illegal actions but would, without an amnesty, be scared by possible prosecution and penalties that come with non-compliance. More justifiably, the COVID-19 pandemic had worsened cashflow positions of a majority of enterprises. Granting this amnesty will therefore be viewed by taxpayers as a genuine gesture by BURS, which makes it a listening authority, in taxpayers' minds. That is also expected to allow impacted taxpayers to be able to obtain tax clearance certificates and increase their participation in government tenders.

3.4 Dissuaded taxpayers

Studies show that honest taxpayers view tax amnesties as unfair since tax cheats are set off the leash and that may dissuade their voluntary compliance. The mere announcement of an amnesty may make taxpayers aware of the widespread presence of non-compliance, something that may have previously been unknown to them. Some may also anticipate another amnesty to be given in future, thus deciding to pay less and reducing post- amnesty compliance. We however do not believe that most compliant taxpayers will negatively respond to the amnesty given that it is the first such move in 20 years.

Empirical evidence elsewhere shows that responses to tax amnesties are largely dependent on two major aspects. i.e. the attitude of taxpayers as well as the actual ability by taxpayers to fulfill the obligation. Where taxpayers have confidence in the tax system and are aware that another tax amnesty will hardly come, the response may be favourable. This however is premised on the assumption that the non-payment of tax was mainly due to genuine failure to do so. Hard-core tax evaders normally do not respond to amnesties unless they are accompanied by structural changes to the tax system that is enticing.

4. CONCLUSION

We conclude therefore that tax interest and penalties of +/- P4.05 billion will be waived whilst P826m of principal tax will be paid to the tax authority due to the tax amnesty. However, the short-term direct returns will ultimately depend on taxpayer's response to the tax amnesty, ability to settle their tax debts and the effects of COVID-19 on their financial affairs.

We believe that around 70% of delinquent taxpayers will positively respond to the tax amnesty, which will result in a temporary increase in payment of outstanding debts as taxpayers hope for the waivers.

REFERENCES

1. Tax Policy Analysis, The Introduction of Russian Tax Amnesty
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwju3ejBhMTxAhWIUMAKHfERBuUQFnoECAIQAw&url=https%3A%2F%2Fwww.issueab.org%2Fresources%2F5317%2F5317.pdf&usg=AOvVaw0PMzEnEkz8H0mFhs57Qyy5>
2. Burs Annual Reports
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjWqcPjhMTxAhWcQUEAHXaKAdMQFnoECAIQAw&url=http%3A%2F%2Fwww.burs.org.bw%2Findex.php%2Flegal-year-reports&usg=AOvVaw3B703eCsokip8ZKywa-w4I>
3. COVID-19's effects on tax revenues: - a bias towards tax collection efficiency, Aupracon Tax Specialists 6 June 2020
4. 2021 BUDGET SPEECH, By Honor-able Dr Thapelo Matsheka, Minister of Finance and Economic Development ,Delivered to the National Assembly on 1st February 2021
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi76PLriMTxAhUBiFwKHSU_DZgQFnoECAIQAw&url=https%3A%2F%2Fwww.parliament.gov.bw%2Findex.php%2Ffiles%2F37%2FNew-category%2F1848%2FBUDGET-SPEECH-2021.pdf&usg=AOvVaw3TOFgzsp6_OgwxHn9d8RTtr
5. Tax Amnesties, Theories and some alternatives, Le Borgne and Baer, 2008
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj0n9eIicTxAhVLilwKHWrpBS0QFnoECAIQAw&url=https%3A%2F%2Fwww.imf.org%2Fen%2FPublications%2FIMF-Special-Issues%2FIssues%2F2016%2F12%2F31%2FTax-Amnesties-Theory-Trends-and-Some-Alternatives-21865&usg=AOvVaw1SZFzjFgf3-O1fvrDuDMqf>
6. Tax Amnesty, Wikipedia
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiCrqzWjMTxAhU0IFwKHb90BzoQFnoECAIQAw&url=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FTax_amnesty&usg=AOvVaw0uEZmCLgW4y0XRS4hKDpER