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GOVERNMENT NOTICES

DEPARTMENT OF FINANCE

No. R. 1353

19 November 2004

**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 certain amendments to the exemptions made under section 74 of the Act and published by Government Notice No. R1596 of 2002 in Gazette No. 24176 of 20 December 2003, by repealing exemption 17 in its entirety and substituting in its stead the amended exemption 17, as set out in the attached Schedule hereto, with immediate effect.

DATED AT PRETORIA THIS 01ST DAY OF NOVEMBER 2004.


TA MANUEL, MP

MINISTER OF FINANCE

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

Exemption from regulations made under Act 38 of 2001

17. (1) This exemption applies to every accountable institution referred to in—

(a) items 6, 7, 14 and 16 of Schedule 1 to the Act, and

(b) item 19 of Schedule 1 to the Act, but only in respect of transactions in terms of which both the sending and receipt of the funds in question take place in the Republic.

(2) Every accountable institution [**which performs the functions of an accountable institution**] referred to in [**items 6, 7, 14 and 16 of Schedule 1 to the Act**] paragraph (1), above, is exempted, [**in respect of those functions,**] subject to the conditions set out in paragraph (4), below, from compliance with the provisions of—

(a) regulations 3 (1) (d), 3 (1) (e), 3 (2) (d), 3 (2) (e), 4 (2) and 4 (3) of the Regulations, concerning the particulars to be obtained and verified in establishing and verifying persons' identities, and

(b) **[of]** section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the records to be kept of the particulars referred to in **[those regulations]** subparagraph (a), in respect of every business relationship or single transaction referred to in paragraph (3), below, with a **[natural person] client** who is a citizen of, or resident in, the Republic, **in terms of which that person holds an account which—**

(a)].

(3) The business relationships and single transactions referred to in paragraph (2), above, are every business relationship or single transaction which—

- (a) enables the **[account holder] client** to withdraw or transfer or make **[electronic] payments [from that account to] of** an amount not exceeding **[R15 000,00 over a 24 hour period] R5 000,00 per day and not exceeding R25 000,00 in a monthly cycle; and**
- (b) **[enables the account holder to receive a deposit, or a series of deposits over a period of 24 hours, into that account not exceeding—**

- (i) on more than one occasion in a calendar month, an amount of R5 000,00; and
- (ii) at any time, an amount of R20 000,00;
- (c) enables the account holder to maintain a balance in that account not exceeding R25 000,00 at any time; and
- (d)] does not enable [the holder of that account] the client to effect a transfer of funds [out of that account] to any destination outside the Republic, except for a transfer as a result of a point-of-sale payment or a cash withdrawal in a country in the Rand Common Monetary Area.

(4) This exemption is subject to the conditions that, [such an account does not remain dormant for a period exceeding 180 days and that] should a business relationship referred to in paragraph (2), above, entail the holding of an account,

- (a) the balance maintained in that account does not exceed R25 000,00 at any time; or
- (b) the same person does not simultaneously hold [more than one such account with the same institution at any time] two or more accounts which meet the criteria referred to in paragraph (3) and are similar in nature with the same institution.

(5) No debit from an account, referred to in paragraph (4), may be effected before—

- (a) the prescribed steps referred to in section 21 of the Act, read with the Regulations, concerning the establishing and verification of the identity of the client concerned are completed, and
- (b) the records pertaining to the establishing and verification of the identity of a client referred to in paragraph (a), which an institution is required to keep in accordance with section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act, are obtained,

in the case where—

- (i) the balance in an account referred to in paragraph (4)(a) exceeds R25 000,00, or
 - (ii) a person acquires more than one account referred to in subparagraph 4(b) with the same institution.
-

No. R. 1354

19 November 2004

**SECOND 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.

DATED AT PRETORIA THIS 01ST DAY OF NOVEMBER 2004.


TA MANUEL, MP

MINISTER OF FINANCE

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 funds, or receives funds, in respect of which an application for amnesty in terms of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. 12 of 2003) is yet to be approved, is exempt from compliance with the provisions of section 29 of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001, "the Act"), in respect of making a report under that section of the Act concerning such funds disclosed in such application for amnesty, and involved in a transaction which such a person would have reported for no other reason than that the transaction concerns such funds, had it not been for this exemption.

EXPLANATORY MEMORANDUM ON THE SECOND REPORTING EXEMPTION IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001: THE USE OF FUNDS DISCLOSED IN AN AMNESTY APPLICATION PRIOR TO A DETERMINATION OF THE AMNESTY APPLICATION

1. The exemption from the obligations of section 29 of the Act is aimed at facilitating the role of financial institutions, financial advisors and intermediaries in further assisting persons, who have applied for amnesty under the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Amnesty Act), while the determination of the amnesty application is pending.
2. The exemption will apply to financial institutions, financial advisors and intermediaries, as well as any other person who carries on a business or is in charge of or manages a business or who is employed by a business, by operation of law and will not have to be applied for. The exemption is limited and applies only in respect of funds disclosed in amnesty applications under the Amnesty Act (amnesty related funds).
3. The exemption will exempt persons to whom it applies from the duty under section 29 of the Financial Intelligence Centre Act, 2001 (the FIC Act) to report suspicious and unusual transactions to the Financial Intelligence Centre specifically in respect of the reinvestment or other usage of funds which are the subject of a pending amnesty application under the Amnesty Act.
4. The proposed exemption cannot absolve any person from liability for their own involvement in contraventions of the Exchange Control Regulations

or Tax Evasion or any other criminal activity associated therewith, since that liability does not arise from the provisions of the FIC Act.

5. The full force of the law also remains applicable to any undisclosed funds that should have been disclosed under the amnesty process. Accordingly, where an applicant sought and received amnesty advice, but failed to file an amnesty application, or where an applicant did not seek amnesty advice and did not file an amnesty application, financial advisors and intermediaries must report any proposed transactions concerning such funds to the Centre under section 29 of the FIC Act.
 6. In all other matters unrelated to the amnesty, the financial institution, financial advisor or intermediary concerned remains obliged to file reports concerning financial transactions of a suspicious or unusual nature with the Centre under section 29 of the FIC Act.
 7. In conclusion, financial institutions, financial advisors and intermediaries are cautioned to ascertain at all times that funds under their control/administration are subject to a pending amnesty application before proceeding with a new transaction relating to such funds.
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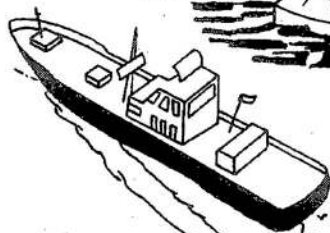
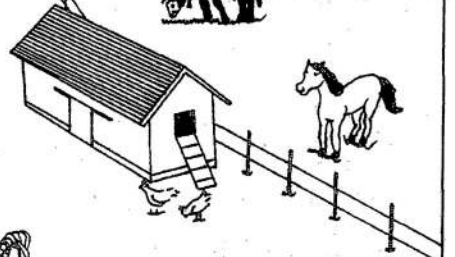
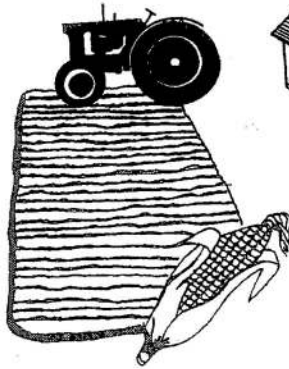
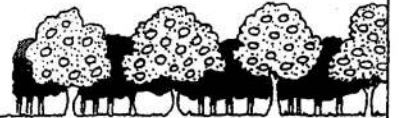
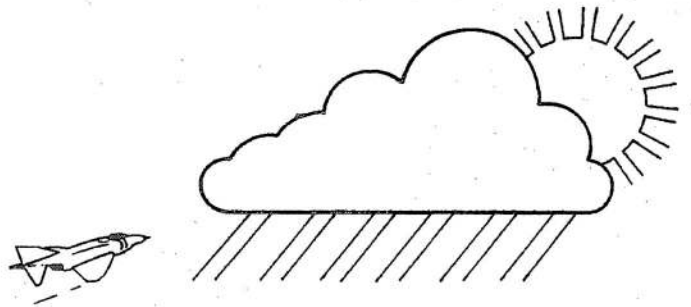
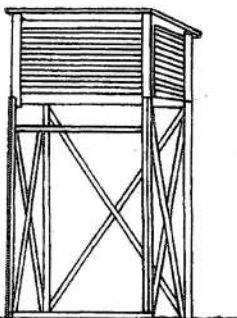
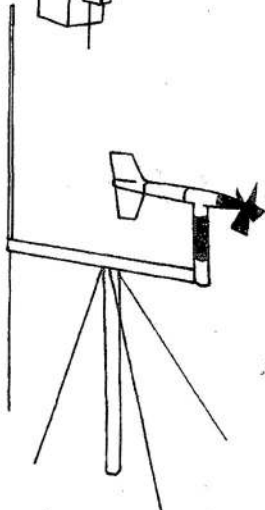
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