

# EXECUTIVE COUNCIL

## CONFIDENTIAL

**Title of Report:** Taxes (Amendment) (No 2) Bill 2011

**Paper No:** 106/11

**Date:** 28 April 2011

**Report of:** Attorney General/Commissioner for Taxation

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### 1.0 Purpose

The purpose of this paper is to submit, for Executive Council's approval, a draft Bill (intended to implement a previous decision of Executive Council), with a view to it being published in the *Gazette* and presented to the Legislative Assembly in May.

### 2.0 Recommendations

Executive Council is recommended to approve the attached draft Bill for publication in the *Gazette* and presentation to the Legislative Assembly in May.

### 3.0 Summary of Financial Implications

No new financial implications

### 4.0 Background

4.1 At its meeting on 25 November 2010, Executive Council considered ExCo paper 280/10 and approved a recommendation to amend Schedule 6 of the Taxes Ordinance to extend petroleum licensees' liability for unpaid tax in respect of activities carried out in their licensed areas.

4.2 A copy of paper 280/10 is annexed for ease of reference. However, in summary, the decision was taken to extend petroleum licensees' existing liability for contractors' and sub-contractors' income tax and corporation tax so that it also covers amounts due under the POAT Regulations in respect of Payments on Account of Tax (POAT) and Medical Services Tax (MST).

4.3 At its meeting on 24 February 2011, Executive Council considered ExCo paper 65/11 and approved a recommendation (among others) that the regime for gathering information from petroleum licensees should be reinforced by the introduction of a system of civil penalties for failure to comply, in addition to the existing criminal offence.

4.4 A copy of the relevant extract from paper 65/11 is annexed for ease of reference. However, in summary, a decision was taken to provide for a £250 civil penalty against a

petroleum licensee for failure to comply in time with a notice to provide information and for a further £250 penalty every 15 days afterwards until the notice is complied with.

4.5 Although it was not specifically addressed in paper 65/11, it is now proposed that the Commissioner for Taxation should have a discretionary power to remit (ie to reduce or waive) civil penalties but only if the licensee applies for remission and can show that special circumstances apply and that remission is appropriate in those circumstances.

4.6 The power for the Commissioner for Taxation to remit civil penalties is considered an appropriate and necessary legal safeguard in the context of the overall scheme.

## **5.0 Draft Bill**

5.1 A draft Taxes (Amendment) (No 2) Bill has been prepared and it is annexed to this paper.

5.2 The Legislative Drafter has been liaising between Taxation Office and an outside contract drafter with more specific experience in drafting tax legislation who has drafted a Bill to make the amendments to Schedule 6 in relation to petroleum licensees' liability.

5.3 The provisions of the Bill are explained in the Objects and Reasons that appear at the end of the Bill.

5.4 The Bill largely reflects decisions already taken on the basis of ExCo papers 280/10 and 65/11. However, Executive Council's attention is specifically drawn to the power for the Commissioner for Taxation to remit civil penalties (see paragraph 5.5).

## **6.0 Financial Implications**

The draft Bill has no new financial implications, as the financial implications of the proposals to amend Schedule 6 were already dealt with in ExCo papers 280/10 and 65/11.

## **7.0 Legal Implications**

The legal implications of this paper are set out in the body of the paper.

## **8.0 Human Resources Implications**

None

**EXCO DRAFT: 17.4.2011**

**Taxes (Amendment) (No 2) Bill 2011**

(No: of 2011)

**ARRANGEMENT OF PROVISIONS**

1. Title
2. Commencement
3. Schedule 6 to the Taxes Ordinance amended – Territorial extension of charge to tax:  
supplementary provisions

**TAXES (AMENDMENT) (No 2) BILL 2011**

(No: of 2011)

(assented to: 2011)

(commencement: on publication)

(published: 2011)

A BILL

for

AN ORDINANCE

To amend the Taxes Ordinance (Title 69.1).

BE IT ENACTED by the Legislature of the Falkland Islands —

**1. Title**

This Ordinance is the Taxes (Amendment) (No 2) Ordinance 2011.

**2. Commencement**

This Ordinance comes into force on publication in the *Gazette*.

**3. Schedule 6 to the Taxes Ordinance amended – Territorial extension of charge to tax: supplementary provisions**

(1) This section amends Schedule 6 to the Taxes Ordinance.

(2) Paragraph 2 is amended by —

(a) in sub-paragraph (4) —

(i) omitting “this sub-paragraph” and substituting “sub-paragraph (1)”, and

(ii) inserting “on conviction” after “liable”; and

(b) adding the following sub-paragraphs —

“(5) If the time limited by a notice under sub-paragraph (1) expires without the licensee having given the information required, the licensee is liable to pay —

(a) a penalty of £250, and

(b) an additional penalty of £250 in respect of each successive period of fifteen days that elapses before the information is given.

(6) A penalty under sub-paragraph (5) —

- (a) is incurred whether or not the licensee is charged with an offence under subparagraph (4);
- (b) attracts the provisions of Schedule 4 and any other provision of this Ordinance about penalties; and
- (c) may be wholly or partially remitted by the Commissioner on the licensee's application if the Commissioner is satisfied that remission is appropriate in the special circumstances of the case."

(3) The following paragraphs are added —

**“6. Recovery of unpaid deductions**

(1) The Commissioner may serve a notice under this paragraph on a licensee requiring the licensee to pay an amount that —

- (a) should have been paid in accordance with POAT regulations by an employer identified by the licensee in information supplied in accordance with paragraph 2, and
- (b) remains unpaid thirty days after it became due and payable by the employer.

(2) The licensee must pay the amount stated in the notice, together with any interest that has become due under POAT regulations, within thirty days of the service of the notice.

(3) A notice under this paragraph must state particulars of the liability under POAT regulations payment of which is sought under this paragraph.

(4) Any amount which a licensee is required to pay by a notice under this paragraph may be recovered from him as if it were tax due and duly demanded from him; and he may recover any such amount paid by him from the person who was liable to make the payment under POAT regulations.

(5) A payment in pursuance of a notice under this paragraph shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(6) Where more than one licensee may be given a notice under this paragraph in respect of the same employer, the liability of the licensees to pay the amount specified in the notice shall be joint and several.

(7) For the avoidance of doubt, a reference in this paragraph or paragraph 7 to liability under the POAT regulations is a reference to liability under regulations under section 91 of this Ordinance and includes, in particular —

(a) a reference to liability arising as a result of a determination made under those regulations; and

(b) a reference to liability to make payments in respect of Medical Services Tax under the POAT regulations as extended by sections 23 and 24 of the Medical Services Tax Ordinance 2010 (No 13 of 2010).

(8) Fair and reasonable apportionments may be made for the purposes of this paragraph.

#### **7. Exemptions from paragraph 6**

(1) Where, on an application made by a person who will or might become liable to make payments under POAT regulations which, if remaining unpaid, could be recovered under paragraph 6 from a licensee, the Commissioner is satisfied that the applicant will comply with any obligations imposed on him by POAT regulations, he may issue a certificate to the licensee exempting him from the provisions of that paragraph with respect to any payments under POAT regulations for which the applicant may become liable.

(2) The Commissioner may, by notice in writing to the holder of a certificate issued under this paragraph, cancel the certificate from such date, not earlier than thirty days after the service of the notice, as may be specified in the notice.”

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### OBJECTS AND REASONS

This Bill would amend Schedule 6 to the Taxes Ordinance (Title 69.1) to deal with two issues:

(a) to provide for a system of civil penalties on petroleum licensees who do not comply with notices to provide information; and

(b) to extend petroleum licensees’ liability for amounts due from (but not paid by) contractors operating in their licensed areas to cover payments on account of tax (POAT) and Medical Services Tax (MST).

Under Schedule 6, the Commissioner for Taxation has the power to serve notices on petroleum licensees requiring the provision of certain information.

Failure to comply with a notice is already a criminal offence under paragraph 2(4) of Schedule 6 (with a maximum penalty of level 7 on the standard scale – which will be £17,500).

*Clause 3(2)* would amend paragraph 2 to introduce a system of civil penalties for failure to comply.

A petroleum licensee would be liable to a £250 penalty for failing to comply by the due date with a notice to provide information and to a further £250 penalty every 15 days after that until the notice is finally complied with.

The Commissioner would have the power to reduce a civil penalty (or even to waive it entirely). However, a licensee seeking to have a penalty reduced or waived would have to apply to the Commissioner and would have to satisfy the Commissioner that there were special circumstances and that reducing or waiving the penalty would be appropriate in those special circumstances.

Under Schedule 6, petroleum licensees can also be made liable for tax due from their contractors.

*Clause 3(3)* would extend that liability to amounts due in respect of POAT and MST by adding two new paragraphs to Schedule 6:

- the new paragraph 6 deals with the recovery of POAT and MST from licensees; and
- the new paragraph 7 would make similar provision for exemptions to the provision already made in paragraph 5 for exemptions from the existing liability.

## **Extract from 65/11**

### **5.4 Schedule 6**

Schedule 6 of the Taxes Ordinance 1997 requires the licensee to make a return each quarter of all payments made by them in connection with oil activities in the Falkland Islands. This return should be submitted to the Taxation Office within 45 days of the date of issue. If the return is not made by the deadline the only recourse we have is to start legal proceedings and if convicted the licensee may be liable to a fine not exceeding level 7 on the standard scale. Having considered advice from Attorney General's Chambers about the issues that arise in relation to the possibility of prosecution the Taxation Officer would like to introduce a penalty system for the failure to submit the returns by the due date.

The proposal is to introduce an automatic penalty of £250 for non-submission by the due date, then £250 for every 15 days it is late after that.