

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Amendments to the Taxes Legislation - Penalties on Individual Tax Returns
Paper No: 173/11
Date: 25 August 2011
Report of: Taxation Officer / Commissioner of Taxation

1.0 Purpose

To present to Honourable Members an amendment to the Taxes Ordinance 1997 to allow penalties to be charged on all income tax returns not filed by the deadline.

2.0 Recommendation

It is recommended Honourable Members:

- (a) approve the proposals detailed in paragraph 5 below so that a Taxes (Amendment) Bill can be drafted for implementation from 1 January 2012;
- (b) instruct AG's office to draft legislation as soon as possible.

3.0 Summary of Financial Implications

None

4.0 Background

- 4.1 On reviewing the Tax Office procedures for charging penalties it has just come to light we should not be applying penalties on individuals who are late in filing their income tax returns and who are not required to submit accounts
- 4.2 Section 12 of the Taxes Ordinance 1997, Notice of chargeability and tax returns, allows for penalties only to be charged under section 12(4) where an individual fails to submit their accounts (i.e. self-employed) with their income tax return by the due date. However we have always applied penalties to all income tax returns that are filed late. There are no other provisions under section 12 which we can apply penalties for the late filing of income tax returns.
- 4.3 I do believe this is an oversight and it was always the intention to charge penalties on all income tax returns which are filed late.

4.4 This paper proposes to amend this discrepancy as without this amendment no penalties can be charged on income tax returns where accounts are not required.

4.5 In addition, penalties for income tax have not been reviewed for several years and it is proposed to change section 12(4) to increase the penalty by a further £100 to £200 if the submission is more than 3 months late.

5.0 Proposed amendments

5.1 Section 12(4) currently reads:

(4) Any person who fails or neglects to lodge any accounts or other information in accordance with subsection (2) shall be liable to a penalty-
(a) if the accounts or other information are delivered not more than three months after the due time, of £100; or
(b) if the accounts or other information are delivered more than three months after the due time, of £200

Proposed amendment:

*(4) Any person who fails or neglects to lodge any **return**, accounts or other information in accordance with subsections **(1) and (2)** shall be liable to a penalty-*
*(a) if the **return**, accounts or other information are delivered not more than three months after the due time, of £100; or*
*(b) if the **return**, accounts or other information are delivered more than three months after the due time, **a further charge** of £200.*

6.0 Financial Implications

If these amendments are agreed then there would be a minimal increase in tax revenues. However some taxpayers who were charged a penalty in the past can request this to be refunded to them as the legislation currently does not allow for the penalty to be imposed.

If the amendment is not agreed then those taxpayers who submit their income tax returns late will not be charged a penalty unless they are self-employed and this will result in a small loss of revenue.

7.0 Legal Implications

A further Taxes (Amendment) Bill will need to be drafted incorporating the changes set out in this report. Competing priorities have not yet permitted a detailed analysis of the legal implications of the amendments that would need to be made.

Assuming Executive Council approves the recommendation to bring the change into force on 1 January 2012, it should be possible to achieve this but it will need to be recognised that this would involve some departure from the priorities previously agreed.

8.0 Human Resources Implications

None