

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Defence Related Taxation Exemptions

Paper No: 232/09

Date: 26 November 2009

Report of: The Commissioner of Taxation

1.0 Purpose

1.1 To seek approval for a further 1 year extension to the Taxes and Duties (Defence Contractors' Employees Exemption) Orders (which only have effect until 31 December 2009), to allow time for the Policy Unit to complete a Tax Policy Review, after which further recommendations may be made.

2.0 Recommendation

2.1 Executive Council is recommended to advise that, subject to the advice of the Standing Finance Committee, His Excellency the Governor make the Taxes and Duties (Defence Contractors' Employees Exemption) Order 2009 in the form of the draft annexed to this report, taking the current exemption to 31 December 2010.

3.0 Summary of Financial Implications

3.1 There are no direct financial implications from the recommendation in the paper since no provision has been made for the taxation revenue from Defence Contractor Employees.

4.0 Background

4.1 Some employees in defence related businesses are exempted from paying Falkland Islands Income Tax, subject to certain conditions. These exemptions are contained within the Taxes and Duties (Defence Contractors' Employees Tax Exemption) Order 2007 and the Taxes and Duties (Defence Contractors' Employees Exemption) (No 2) Order 2008.

4.2 These orders were made under the powers given to the Governor by the Taxes and Duties (Special Exemptions) Ordinance 1987. Section 9A of the Ordinance (which was introduced in 1995) permits the Governor to make such an Order on the advice of the Standing Finance Committee.

- 4.3 Following the acceptance of the proposals presented to Executive Council on 13 November 2008, paper 211/08, it was agreed to extend the exemption from Falkland Islands tax to MoD Defence Related Employees' to at least 31 December 2009.
- 4.4 The Tax Policy Review being undertaken by the Policy Unit is not yet complete. On completion of that review further proposals/recommendations will be made. However, in the meantime, it is proposed that the existing exemption remain in place for a further 1 year period.
- 4.5 In addition, the list of designated employers (to whose employees the exemption applies) needs to be updated.

5.0 Financial Implications

- 5.1 The precise financial implications are unknown as tax exemptions are in place and therefore there is no requirement for information on income to be declared for any relevant employment.
- 5.2 In paper 310/05, submitted to Executive Council on 15 December 2005, it was roughly estimated that the annual revenue that could be collected from Defence Contractor Employees' amounted to between £750,000 and £900,000.
- 5.3 Information gathered at that time showed the majority of employees were and would still remain under the personal allowance. It is therefore unlikely that the estimate would have increased significantly.

6 Legal Implications

- 6.1 The Legislative Drafter has produced a draft order that would implement the recommendation in this report. A copy of that draft is annexed.
- 6.2 It may be worth mentioning that there is a change in the style of the introduction to the order from previous subsidiary legislation. This is part of an evolving process being carried out within the Attorney General's Chambers.
- 6.3 Instead of the preamble that was used previously, this order is preceded by a set of recitals that explain the powers under which the order is being made and give more prominence to the role of the Executive Council in the process.

7 Human Resources Implications

None.

DRAFT: 27.10.2009 (RMB)

Amended: 3.11.09 - RCC

SUBSIDIARY LEGISLATION

TAXATION

Taxes and Duties (Defence Contractors' Employees Exemption) Order 2009

S. R. & O. No. of 2009

Made: 2009

Published: 2009

Coming into force: 1 January 2010

I make this order under section 9A of the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2) —

- (a) on the advice of the Executive Council; and
- (b) on the advice of the Standing Finance Committee as required by section 9A(1) of the Ordinance.

1. Title

This order is the Taxes and Duties (Defence Contractors' Employees Exemption) Order 2009.

2. Commencement

This order comes into force on 1 January 2010.

3. Interpretation

In this order—

“designated employer” means an employer listed in the Schedule;

“qualifying employee” means a person—

- (a) who satisfies the requirements of section 9A of the Ordinance; and
- (b) who is employed by a designated employer;

“relevant employment” means—

(a) employment only for the purpose of providing services in the Falkland Islands to Her Majesty's regular armed forces or in the Falkland Islands to the Ministry of Defence of Her Majesty's Government in the United Kingdom; or

(b) employment only for the purposes of providing services to persons who are themselves in relevant employment by virtue of paragraph (a) of this definition or by virtue of this paragraph of this definition;

“relevant income” means income from relevant employment; and

“retirement pension contributions” means contributions that an employee is required to pay under the Retirement Pensions Ordinance (No. 20 of 1996).

4. Application

(1) Subject to article 5, a qualifying employee is exempt from liability under any law of the Falkland Islands to pay—

(a) income tax on relevant income from a designated employer; and

(b) retirement pension contributions in respect of that employment.

(2) The exemption applies whether the liability arises before or after this order comes into force.

5. Duration

Nothing in this order confers any exemption to pay either—

(a) income tax in relation to earnings after 31st December 2010; or

(b) retirement pension contributions in respect of employment after that date.

SCHEDULE DESIGNATED EMPLOYERS

(article 3)

Interserve Defence Limited

MPI Aviation Limited

Navy, Army and Air Force Institutes

Satec Limited

Serco Limited

Services Sound and Vision Corporation

Sodexo Defence Services Limited

Trant Construction Limited
Veritair Limited
VT Communications Limited

Made 2009

A. E. Huckle,
Governor.

EXPLANATORY NOTE
(not forming part of the order)

Section 9A of the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2) gives the Governor power to make orders granting exemptions from income tax and retirement pension contributions to certain individuals engaged in defence-based employment. Such orders can only be made on the advice of the Standing Finance Committee.

This order means that employees who work for one of the employers listed in the Schedule are exempt from income tax and retirement pension contributions, provided that they are engaged in relevant employment (as defined) and the other requirements set out in section 9A of the Ordinance are met.

This order extends an existing exemption until the end of 2010 and the list of employers designated for the purposes of this exemption is updated.