

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Medical Services Tax Bill

Paper No: 242/10

Date: 21 October 2010

Report of: Commissioner of Taxation
Attorney General/Legislative Drafter

1. Purpose

The purpose of this paper is to seek Executive Council's approval of the Medical Services Tax Bill.

2. Recommendations

Executive Council is recommended to approve:

- (a) the publication in the *Gazette* of the Medical Services Tax Bill (a draft of which is attached); and
- (b) the presentation of the Bill to the Legislative Assembly at its session in November 2010.

3. Summary of Financial Implications

No new financial implications

4. Background

4.1 At its meeting in July 2010, Executive Council considered ExCo paper 181/10.

4.2 Although there was some discussion as to what the measure should be called (see paragraphs 6.27 to 6.33 below), Executive Council approved the reintroduction of the tax formerly known as the Medical Services Levy, previously imposed between 1979 and 1994.

4.3 Executive Council also made a number of decisions in relation to specific aspects of the measure and its application.

5. Financial Implications

5.1 There are no new financial implications, as the Bill reflects existing decisions.

5.2 There are a number of areas where points of detail (not specifically addressed by Executive Council) have had to be dealt with during the course of drafting but these are not expected to have any significant financial effect.

6. Legal Implications

Introduction

6.1 This section does not contain a line by line analysis of the draft Bill (see the Objects and Reasons sections at the end of the draft Bill). However, this section does contain a summary of the key issues.

6.2 The question of what to call it is to be described is also revisited.

Summary of the key points in the Bill

6.3 If it is approved by Executive Council and passed by the Legislative Assembly, the Bill would do the following things:

(a) At the heart of the legislation are the provisions that would impose the proposed new tax and set its rates (see clauses 4 and 5).

(b) Part 3 of the Bill deals with the scope and application of the tax for employees and employers – the scope of earnings and benefits in kind for the purposes of this tax would be largely identical to that of income tax on employment (see clauses 6 to 13).

(c) Part 4 of the Bill deals with the scope and application of the tax for self-employed persons – the scope of relevant profits for the purposes of this tax would be similar (but not identical) to that of income tax on self-employment (see clauses 14 to 20).

(d) MLAs would be treated as self-employed in relation to their allowances and expenses – this would be the same as the approach already taken for the purposes of income tax (see: clause 15; and the amendments to be made to the Members' Remuneration Ordinance by clauses 57 and 58).

(e) There would be a number of exemptions which largely reflect the decisions taken previously by Executive Council (see clause 21).

(f) Responsibility for administering the proposed new measure would fall on the Commissioner of Taxation (ie the Financial Secretary) but functions and powers could be delegated to other public officers (and it is envisaged that this role would be carried out by the Taxation Office) (see clause 22).

(g) Payments on account for the tax would be collected via the existing Payments on Account of Tax system operated by the Taxation Office (see: clauses 23 and 24; and the specific amendments that would be made to the Payments on Account of Tax (Employees' Deductions) Regulations by clause 59 and the Schedule).

(h) The administration of the tax would be supported by powers to obtain information (in conjunction with the existing machinery that exists under the Taxes Ordinance) and to make use of information already held (see: clauses 25 to 36; clauses 41 to 49 and the amendments to be made to the Taxes Ordinance by clause 55).

(i) It is envisaged that the process of carrying assessments for the tax would be carried out in conjunction with the assessment of income tax and there would also need to be additional assessments for employers (see: clauses 37 to 40; and the amendments to be made to the Taxes Ordinance by clauses 52 to 54).

Key issues

6.4 At the risk of stating the obvious, the Bill is very different from the previous Medical Services Levy Ordinance – not least because it is much longer. That reflects changes in taxation generally (both here in the Islands and worldwide) that have taken place since 1979. It also reflects an attempt to balance the need to make the Bill as self-contained as possible, at the same time as:

- making use of the existing taxation system; and
- ensuring consistency with the Taxes Ordinance.

6.5 Although the draft Bill mostly reflects specific decisions that were taken by Executive Council in July 2010, there are a few issues in relation to which there has not been a specific decision and the draft reflects a policy consensus amongst officials.

6.6 One decision that affects MLAs directly is the decision as to how the proposed new measure should be applied to them. Under the Members' Remuneration Ordinance, MLAs are taxed on their allowances and expenses as if they were earnings from self-employment. On the other hand, MLAs are treated for the purposes of Retirement Pensions Contributions and contributions into the Falkland Islands Pensions Scheme as if they were employed by FIG. It is considered that the principle that should apply for the purposes of the tax should be the same as for income tax. The effect of this is that the rate applicable to MLAs will be 1½% (payable by 1 September in the following year) with no employer's contributions being payable out of the Gilbert House budget.

6.7 Although UK Government staff would be exempt, staff of the Government of South Georgia and the South Sandwich Islands would not be exempt; their status would depend on where their duties are carried out. GSGSSI staff based on South Georgia are not liable for income tax in the Falkland Islands and would not be

liable for the proposed tax either. However, GSGSSI staff based in the Falkland Islands would be liable in the same way as they are already liable for Falkland Islands income tax.

6.8 In relation to FIGO employees, some are liable for UK tax and national insurance but some are still taxed as if they were in the Falkland Islands. In the context of defining what is and what is not Falkland Islands employment (which is particularly important with the current influx of oil workers), the simplest solution would be not to include any FIGO employees. This may be contrary to Executive Council's previous decision that the London allowance payable to FIGO employees should be exempt – which implies that FIGO employees should be liable in respect of the rest of their earnings and benefits in kind. However, the solution now proposed could be justified on the basis that FIGO employees do not make use of medical services in the Falkland Islands.

6.9 A wider exemption covering employees wholly or mainly employed in the Falkland Islands for payments made to cover extra costs when carrying out duties elsewhere is proposed.

6.10 It is proposed that payments made to reimburse expenses to employees should be exempt and that employees should be entitled to claim deductions for expenses in the same way as for income tax.

6.11 There would, however, be some difference in the treatment of pension contributions. It is proposed that pension contributions should be ignored entirely for the purposes of the proposed new measure:

- neither employees nor employers would be liable in respect of pension contributions made by the employer; but
- unlike the position in relation to income tax, employees would not be able to claim deductions in respect of pension contributions they make themselves.

6.12 The information gathering powers that are proposed are quite extensive and allow for data collected under the Taxes Ordinance to be used for the purposes of this Bill (and vice versa). There would also be some “double-banking” of information gathering powers between the two regimes, primarily to ensure that there are no gaps between the two of them.

6.13 As a safeguard, there are specific provisions in clauses 47 and 48 to ensure that a person cannot become liable for more than one penalty for essentially the same infringement and cannot be prosecuted more than once for essentially the same offence.

6.14 Section 203 of the Taxes Ordinance (under which information can be obtained from employers, agents, contractors and other persons) is also being amended – it becomes more stringent but this is to reflect the fact that it will also become relevant for the purposes of the tax, which would apply at all levels of income within its scope and not just above a certain level.

6.15 Among the amendments that would be made to the Payments on Account of Tax (Employees' Deductions) Regulations is a new regulation 12B that would create a new power to make determinations (ie estimated assessments) for the purposes of payments on account of tax. That would apply for the purposes of income tax as well as the new tax.

6.16 There would be provisions allowing for refunds of tax to be set off against liabilities under the new tax (and vice versa).

6.17 The decision to set a lower age limit of 17 is consistent with the scope of Retirement Pension Contributions. However, the same issue that arose earlier this year in relation to the upper age limit for Family Allowance arises in reverse here, in that there will be children aged 16 who have left school and entered full time employment but who would be exempt from liability under this proposal – depending on when in the year a child's birthday falls, this could be the case for nearly a full year.

6.18 There are minor exemptions relating to the calendar month when a child turns 17. These have been included for convenience on the basis that the cost of apportionment would exceed the amount collected.

6.19 The decision has been taken that to avoid the need to apportion relevant profits made by self-employed persons, the new tax should not apply to periods of account that start before its introduction on 1 January 2011. There are some people (mostly engaged in businesses related to tourism) who have accounting years that are not the same as the calendar year. These people will not be subject to the new tax on relevant profits for up to a year and will not pay anything on relevant profits until 1 September 2013. However, it is not possible to change accounting date purely for avoidance purposes.

6.20 Other self-employed persons with calendar accounting years will have to make their first payments on relevant profits by 1 September 2012. The same will apply to MLAs on their allowances.

6.21 Reflecting express instructions, the draft Bill does not contain anything about the use of the money raised by the proposed new measure. Again reflecting express instructions, there is nothing in the draft Bill that would prevent the use of the funds raised for purposes other than the provision of medical services.

Scope for avoidance

6.22 There are a number of areas in which there is still some potential for avoidance. As a matter of policy these "loopholes" do not need to be plugged at this stage but should be kept under review.

6.23 It would be feasible for personal income derived by the owners of businesses that are already incorporated as limited companies to be restructured so that some or all of it is taken in the form of dividends (on which nothing would be payable

under the proposed new measure) rather than as director's fees (on which 2½% would be payable).

6.24 There might even be an incentive in some cases for sole traders or partnerships to incorporate their businesses (1½% would be payable on profits from self-employment but not on dividends). The incentive to do this has been reduced because the rate payable on relevant profits is now 1½% rather than 2½%. Nor is the situation entirely clear cut because of the interaction between the deduction of expenses for the purposes of calculating taxable profits for Corporation Tax purposes (directors' fees are deductible but dividends are not) and the system of tax credits for dividends.

6.25 There is some scope for avoidance by employees and employers by "salary sacrifice" arrangements. Pension contributions made by employees would not be deductible under the Bill but pension contributions made by employers on their employees' behalf would be deductible (for both the employees and the employers). The situation is complicated by the distinction between retirement benefit schemes and personal pension schemes: contributions made by employers into approved retirement benefit schemes are deductible for tax but those made into personal pension plans are not.

6.26 The Bill contains provisions to prevent avoidance by employees and their employers by means of agency and personal service company arrangements. These operate by means of a cross-reference to the corresponding provisions in the Taxes Ordinance (sections 22 and 22A). This is not necessarily watertight because there are shortcomings in these provisions. However, further work on this (to reduce the scope for avoidance in relation to both income tax and the current proposals) is being undertaken separately.

Tax or levy?

6.27 The draft Bill refers to a Medical Services Tax rather than a Medical Services Levy, as did the Legislative Programme. The question of what to call the measure is the subject of disagreement between the Attorney General's Chambers on one side and the Commissioner of Taxation and the Taxation Office on the other.

6.28 This is not a new issue:

- It was considered by the previous Executive Council in the context of an earlier (unsuccessful) proposal to reintroduce this measure, which was to have been referred to as an Employment Tax rather than as a Medical Services Levy;
- This issue was explored in ExCo paper 181/10 and was discussed by Executive Council at its meeting in July 2010

6.29 The advice of AG's Chambers remains the same and can be summarised as follows:

(a) The Attorney General's Chambers have, for several years, used plain language drafting for several years. This means that language should not be used to obscure (let alone conceal) the true meaning of legislation.

(b) The measure being proposed would far more accurately (and transparently) be described as a tax rather than as a levy.

(c) Although there are precedents from other jurisdictions for taxes to be described as levies, the nature of the proposal is that payments are to be charged as a percentage of earnings, which is a tax (whatever label is attached to it). The income tax base and the base for the proposed new tax are almost identical.

(d) The machinery that is going to be used to collect these payments is the system of Payments on Account of Tax (for employees) and Income Tax Assessment (for the self-employed). That machinery will be operated by Taxation Officers from the Taxation Office.

6.30 There is an extensive degree of overlap with the Taxes Ordinance and a many cross-references to it in the Bill.

6.31 It is a separate issue whether the measure can even legitimately be described as a Medical Services Tax rather than as an Employment or Payroll Tax, because of how the proceeds are to be accounted for.

6.32 The reason why it was decided to re-introduce the former Medical Services Levy may have been the cost of medical services is increasing. However, although the revenue raised will be earmarked by means of a code for the Health and Medical Services budget, it will still be paid into the general Consolidated Fund and could be used for any purpose, not just medical services. The revenue raised also replaces existing funding from other sources – there is no additional funding for extra expenditure.

6.33 The Bill has been drafted on the basis of express instructions that there should be nothing to prevent the use for other purposes of funds raised from the proposed new measure.

12. Human Resources Implications

Apart from a change in process to deal with the new POAT deductions and payments (and the system should be flexible enough to deal with that), there are no HR implications.

EXCO DRAFT: 8.10.2010 (RMB) (11.10.10 BS)

Medical Services Tax Bill 2010

(No: of 2010)

ARRANGEMENT OF PROVISIONS

PART 1: INTRODUCTORY PROVISIONS

1. Title
2. Commencement
3. Interpretation

PART 2: MEDICAL SERVICES TAX

4. Medical Services Tax
5. Rates of Medical Services Tax

PART 3: EMPLOYEES AND EMPLOYERS: EARNINGS AND BENEFITS IN KIND

6. Earnings
7. Value of earnings received otherwise than in money
8. Timing
9. Allowable deductions from earnings
10. Benefits in kind
11. Value of benefits in kind
12. Pension contributions
13. Workers supplied through agencies and intermediaries

PART 4: SELF-EMPLOYED PERSONS: RELEVANT PROFITS

14. Relevant profits
15. MLAs
16. Calculation of relevant profits
17. Periods of account
18. Partnership profits
19. Each business separate
20. Self-employment separate from other activities

PART 5: EXEMPTIONS

21. Exemptions

PART 6: ADMINISTRATION

22. Administration

PART 7: PAYMENTS ON ACCOUNT OF MEDICAL SERVICES TAX

23. Payments on account
24. Extension of power to make POAT Regulations

PART 8: OBTAINING INFORMATION

25. Returns of income
26. Provision of accounts etc
27. Notices as to sources of income
28. End of year returns by employers
29. End of year returns by employers: penalties
30. Other returns
31. Provision of information by public officers etc

PART 9: USING INFORMATION

32. Relevant information and protected information
33. Use of relevant information
34. Relevant information protected by other legislation
35. Provision of relevant information to others
36. Prohibitions on misusing protected information

PART 10: ASSESSMENT OF MEDICAL SERVICES TAX

37. Assessment of Medical Services Tax for employees, self-employed persons and MLAs
38. Assessment of Medical Services Tax for employers
39. Application of additional provisions of the Taxes Ordinance
40. Set off

PART 11: OFFENCES

41. Divulging protected information
42. Using protected information for gain
43. Obtaining information by pretending to act on behalf of Commissioner
44. Failure to provide information
45. Providing false or misleading information
46. Hindering or obstructing an authorised officer
47. Offences by bodies corporate

PART 12: PENALTIES AND PROSECUTIONS

48. Penalties
49. Prosecutions

PART 13: AMENDMENT OF THE TAXES ORDINANCE

50. Amendment of the Taxes Ordinance
51. Section 59 amended – Deductions not allowed
52. Section 90 amended – Repayment of sums deducted
53. Section 186 amended – Repayment of income tax
54. Section 187 amended – Refund of overpayments of corporation tax
55. Section 203 amended – Disclosure of information

PART 14: AMENDMENT OF MEMBERS' REMUNERATION ORDINANCE

56. Amendment of Members' Remuneration Ordinance
57. Section 7 substituted
58. Section 9 amended – Power to amend Schedule

PART 15: AMENDMENT OF PAYMENT ON ACCOUNT OF TAX (EMPLOYEES' DEDUCTIONS) REGULATIONS

59. Amendment of Payment on Account of Tax (Employees' Deductions) Regulations

PART 16: SUBSIDIARY LEGISLATION

60. Subsidiary legislation

SCHEDULE: AMENDMENT OF PAYMENT ON ACCOUNT OF TAX (EMPLOYEES' DEDUCTIONS) REGULATIONS

1. Amendment of Payment on Account of Tax (Employees' Deductions) Regulations
2. Regulation 2 amended – Interpretation
3. Regulation 3 amended – Application of regulations
4. New regulation 8A
5. Regulation 9 amended – Non-resident employees
6. Regulation 10 amended – 'Free of tax' remuneration
7. New regulation 11A
8. Heading above regulation 12 amended
9. Regulation 12 amended – Accounting for deductions and payments on account
10. New Regulation 12B
11. Regulation 13 amended – Information and preservation of records

MEDICAL SERVICES TAX BILL 2010

(No: of 2010)

(assented to: 2010)

(commencement: 1 January 2011)

(published: 2010)

A BILL

for

AN ORDINANCE

To impose a tax known as the Medical Services Tax; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 INTRODUCTORY PROVISIONS

1. Title

This Ordinance is the Medical Services Tax Ordinance 2010.

2. Commencement

This Ordinance comes into force on 1 January 2011.

3. Interpretation

(1) In this Ordinance and in the application of provisions of the Taxes Ordinance (Title 69.1) (and subsidiary legislation made under it) for the purposes of this Ordinance —

“accounting date” means the date to which the accounts of a business are usually made up;

“benefit in kind” has the meaning given to it by section 10;

“carrying on a business” includes letting for residential use a building situated in the Falkland Islands; and

“Commissioner” —

(a) means the Commissioner of Taxation appointed under section 5(1) of the Taxes Ordinance; and

(b) includes other public officers carrying out functions or exercising powers under section 22(2).

“earnings” has the meaning given to it by section 6;

“employee” means an individual —

- (a) aged 17 or more; and
- (b) gainfully occupied either —
 - (i) under a contract of service or apprenticeship, regardless of whether —
 - (aa) the contract is express or implied; and
 - (bb) whether it was made orally, in writing or in some other way; or
 - (ii) as the holder of an office (other than as an MLA);

“employer” includes —

- (a) in relation to the employment of public officers, the Falkland Islands Government;
- (b) in relation to employment of the holder of another office (other than that of MLA), the person or body responsible for paying the earnings and benefits in kind of the holder of the office;
- (c) where either section 22 or 22A of the Taxes Ordinance (which deal respectively with workers supplied by agencies and workers supplied by intermediaries) applies, a person or body treated as a worker’s employer for the purposes of the Taxes Ordinance.

“the Falkland Islands” include —

- (a) areas covered by inland and internal waters within the baselines established by article 3 of the Falkland Islands (Territorial Waters) Order 1989 (SI 1989/1993);
- (b) areas covered by territorial waters, as defined in article 2 of that Order;
- (c) the designated areas referred to in article 2 of Proclamation No 1 of 1991 (which was varied by Proclamation No 1 of 1994); and
- (d) the special area defined in article 2 of Proclamation No 1 of 1997;

“Falkland Islands earnings and benefits in kind” means earnings and benefits in kind from —

- (a) work carried out in the Falkland Islands; or
- (b) Falkland Islands employment;

“Falkland Islands employment” means employment the duties of which are wholly or mainly carried out in the Falkland Islands;

“letting” includes, in relation to a building, allowing a person to occupy the building under an arrangement or agreement (whether or not that arrangement or agreement is a lease);

“Medical Services Tax” means the tax payable under section 4;

“MLA” means either —

(a) an elected member of the Legislative Assembly; or

(b) during the period between a dissolution of the Legislative Assembly and the next meeting of the Legislative Assembly after that dissolution, a person who was an elected member of the Legislative Assembly immediately before that dissolution took place;

“officer”, in relation to a body corporate, has the meaning given to it by section 47(3);

“pension contributions” means —

(a) payments —

(i) that are made into —

(aa) an approved retirement benefit scheme (as defined in section 64(1) of the Taxes Ordinance);

(bb) an approved personal pension scheme (as also defined in that section); or

(cc) the Falkland Islands Pension Scheme established in accordance with the Falkland Islands Pension Scheme Ordinance (No 18 of 1997); and

(ii) in respect of which either of the following provisions of the Taxes Ordinance applies —

(aa) section 67 (which deals with retirement benefit schemes); or

(bb) section 69 (which deals with employers’ contributions into personal pension schemes); and

(b) retirement pension contributions made under the Retirement Pensions Ordinance (No 20 of 1996);

“period of account” means, in relation to a business, a period for which the accounts of the business are made up;

“POAT Regulations” means regulations relating to payments on account of tax made under section 91 of the Taxes Ordinance;

“protected information” has the meaning given to it by section 32(2);

“relevant information” has the meaning given to it by section 32(1);

“relevant profits” has the meaning given to it by section 14; and

“self-employed person” means an individual who is —

(a) aged 17 or more; and

(b) either —

(i) in business as a sole trader or partner; or

(ii) an MLA.

(2) Terms that are used in the Taxes Ordinance (or subsidiary legislation made under it) but that are not defined in subsection (1) have the same meaning when used in this Ordinance as they do in the Taxes Ordinance or the subsidiary legislation.

PART 2 MEDICAL SERVICES TAX

4. Medical Services Tax

A tax known as the Medical Services Tax is payable by —

(a) employees on the gross amount of their Falkland Islands earnings and benefits in kind;

(b) employers on the gross amount of their employees’ Falkland Islands earnings and benefits in kind; and

(c) self-employed persons on relevant profits which are made by them either —

(i) in the Falkland Islands; or

(ii) in a business which is carried on wholly or mainly in the Falkland Islands.

5. Rates of Medical Services Tax

Medical Services Tax is payable —

(a) by employees, at the rate of 1%;

(b) by employers, at the rate of 1½%; and

(c) by self-employed persons, at the rate of 1½%.

PART 3
EMPLOYEES AND EMPLOYERS: EARNINGS AND BENEFITS IN KIND

6. Earnings

The following are earnings —

(a) amounts that are —

(i) chargeable to tax under section 8(1)(b) of the Taxes Ordinance (which deals with gains and profits from employment); and

(ii) not covered by an exemption in section 21.

(b) amounts that are —

(i) taxable under section 58A of the Taxes Ordinance (which deals with the taxation of redundancy payments); and

(ii) not exempt under section 58C of the Taxes Ordinance (which exempts payments not exceeding £20,000 in certain circumstances and contains other exemptions).

7. Value of earnings received otherwise than in money

(1) This section applies to emoluments from employment which are —

(a) received otherwise than in money;

(b) chargeable to tax under section 8(1)(b) of the Taxes Ordinance; and

(c) covered by rules made under section 8(2) of the Taxes Ordinance.

(2) The value of an emolument from employment to which this section applies is the same as the value of that emolument under the rules made under section 8(2) of the Taxes Ordinance.

8. Timing

Section 9(1A) of the Taxes Ordinance (which deals with the time at which gains and profits from employment are treated as being received and paid) applies for the purposes of this Ordinance as if references to income were references to earnings.

9. Allowable deductions from earnings

(1) Subsection (2) applies to the calculation by employees of the earnings on which they must pay Medical Services Tax.

(2) Employees (but not their employers) may make the same deductions as they may make for the purposes of income tax under section 58 of the Taxes Ordinance (which allows deductions for expenses wholly, necessarily and exclusively incurred to produce income from an employment).

(3) No other deductions from earnings are allowed for the purposes of Medical Services Tax, even if those deductions would be allowed for the purposes of income tax under other provisions of the Taxes Ordinance.

10. Benefits in kind

A benefit in kind is a benefit which —

- (a) is received otherwise than in money in respect of employment;
- (b) has been prescribed for the purposes of section 8(1)(c) of the Taxes Ordinance; and
- (c) is not covered by an exemption in section 21.

11. Value of benefits in kind

The value of a benefit in kind is the same as the value prescribed for that benefit under section 8(1)(c) of the Taxes Ordinance.

12. Pension contributions

- (1) Pension contributions made by an employer in respect of an employee are not to be treated as either earnings or benefits in kind.
- (2) Neither the employer nor the employee is liable for Medical Services Tax on those pension contributions.
- (3) Pension contributions made by employees are not deductible from earnings or benefits in kind for the purposes of Medical Services Tax.

13. Workers supplied through agencies and intermediaries

Sections 22 and 22A of the Taxes Ordinance (which deal with workers supplied by agencies and workers supplied by intermediaries) apply for the purposes of this Ordinance as if —

- (a) references in those sections to income tax were references to the Medical Services Tax; and
- (b) references in those sections to remuneration or quasi-remuneration were references to earnings or benefits in kind.

PART 4 SELF-EMPLOYED PERSONS: RELEVANT PROFITS

14. Relevant profits

Relevant profits are the gains and profits made in a business carried on by an individual which are —

- (a) chargeable to tax under section 8(1)(a) of the Taxes Ordinance; and

(b) not covered by an exemption in section 21.

15. MLAs

MLAs are liable for Medical Services Tax on amounts paid to them under the Members' Remuneration Ordinance (No 13 of 2009), as if those amounts had been earned on a self-employed basis.

16. Calculation of relevant profits

(1) The following provisions of the Taxes Ordinance apply for the purpose of calculating relevant profits —

section 59 (which deals with deductions that are not allowed for the purposes of income tax)

section 59A (which provides that corrupt payments are not deductible)

section 67 (which provides, among other things, employers' contributions into approved retirement benefit schemes may, within certain limits, be deducted)

section 97 (which deals with deductions that are allowed for the purposes of income tax)

section 98 (which restricts the deduction of emoluments before they are paid)

section 99 (which deals with entertainment expenses)

section 102 (which allows for augmented deductions in respect of training expenses)

section 103 (which provides for relief in respect of pre-trading expenditure)

(2) No other deductions from relevant profits are allowed for the purposes of Medical Services Tax, even if those deductions would be allowed for the purposes of income tax under other provisions of the Taxes Ordinance.

17. Periods of account

(1) Unless subsection (2) applies, the periods of account for which relevant profits must be calculated are calendar years.

(2) If the Commissioner is satisfied that the accounting date of a business is a date other than 31 December, the Commissioner may allow the relevant profits of that business to be calculated for periods of account ending on that other date in each year.

(3) The accounting date for a business may only be changed if —

(a) the Commissioner requires the change to be made;

(b) the Commissioner approves the change being made;

(c) the change is made as a result of bankruptcy or insolvency; or

(d) the business ceases to be carried on.

(4) If the Commissioner requires or approves the change of an accounting date under section 9(4) of the Taxes Ordinance, that requirement or approval also applies for the purposes of subsection (3).

18. Partnership profits

The relevant profits of a partnership are to be apportioned between the partners in the same shares as they are entitled to them.

19. Each business separate

(1) Subsection (2) applies to an individual if —

(a) the individual carries on more than one business; or

(b) the individual —

(i) carries on one or more businesses; and

(ii) is also an MLA.

(2) If this subsection applies —

(a) the relevant profits of each business are separate; and

(b) losses from one business may not be set off against either —

(i) relevant profits from another business; or

(ii) amounts received as an MLA under the Members' Remuneration Ordinance.

20. Self-employment separate from other activities

(1) This section applies to self-employed persons who are also employees.

(2) Losses made in a business may not be set-off against earnings or benefits in kind.

PART 5 EXEMPTIONS

21. Exemptions

(1) The following are exempt from Medical Services Tax —

(a) earnings and benefits in kind paid to the Governor;

(b) earnings and benefits in kind paid to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;

- (c) earnings and benefits in kind paid out of United Kingdom Government funds to —
 - (i) those serving in the armed forces; and
 - (ii) those serving the United Kingdom Government in a civil capacity;
- (d) gratuities granted to members of the armed forces of the United Kingdom in respect of war services;
- (e) earnings and benefits in kind that are exempt from income tax under the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2);
- (f) allowances paid to employees in addition to their salaries or wages in order to enable them to meet increased expenses incurred (or to be incurred) wholly or mainly as a result of being required to carry out employment duties outside the Falkland Islands;
- (g) payments made to employees to reimburse them for expenses which —
 - (i) are incurred (or to be incurred) by them in the course of their employment; and
 - (ii) would be deductible for income tax purposes.
- (h) payments made by way of bounty to —
 - (i) members of the Falkland Islands Defence Force;
 - (ii) reserve police officers in the Royal Falkland Islands Police; and
 - (iii) retained firefighters in the Falkland Islands Fire and Rescue Service;
- (i) relevant profits made during a period of account that starts before 1 January 2011;
- (j) relevant profits consisting of amounts chargeable to tax under Schedule 2 to the Taxes Ordinance;
- (k) earnings and benefits in kind paid (or payable) to individuals in respect of employment while they are present in the Falkland Islands for less than 30 days in a 12 month period;
- (l) earnings and benefits in kind paid (or payable) in respect of employment on board a fishing vessel to members of the crew of that vessel who are not resident in the Falkland Islands;
- (m) relevant profits made by individuals while they are present in the Falkland Islands for less than 30 days or less in a 12 month period;
- (n) earnings or benefits in kind that are either —

(i) paid to an individual in the calendar month in which that individual's 17th birthday falls; or

(ii) that become payable to the individual during that month;

(o) relevant profits made by an individual during the calendar month in which that individual's 17th birthday falls;

(p) grants paid out of public funds to an individual for the purposes of that individual's education; and

(q) payments received under the Family Allowances Ordinance (Title 65.1).

(2) Welfare payments made out of public funds are exempt from Medical Services Tax (but only to the extent that they are not taxed under the Taxes Ordinance).

PART 6 ADMINISTRATION

22. Administration

(1) The Commissioner is responsible for administering the Medical Services Tax.

(2) Other public officers may —

(a) carry out functions on behalf of the Commissioner in relation to the administration of the Medical Services Tax; and

(b) exercise powers under this Ordinance on behalf of the Commissioner for that purpose.

PART 7 PAYMENTS ON ACCOUNT OF MEDICAL SERVICES TAX

23. Payments on account

(1) Payments on account of the Medical Services Tax payable by employees are to be —

(a) deducted by their employers from payments of earnings made to those employees;

(b) collected from the employers.

(2) These payments are to be deducted and collected in the same way as payments on account of income tax are deducted and collected under Part 4 of the Taxes Ordinance and POAT Regulations.

(3) Payments on account of the Medical Services Tax payable by employers in respect of their employees' earnings and benefits in kind are also to be collected from those employers.

(4) The provisions of the Taxes Ordinance listed in subsection (5) apply for the purposes of payments on account of Medical Services Tax as if —

(a) references to income tax included references to Medical Services Tax;

(b) references to payments on account of tax included references to payments on account of Medical Services Tax;

(c) references to assessable income were references to earnings and benefits in kind; and

(d) references to deductions included payments on account of the Medical Services Tax payable by employers.

(5) The provisions of the Taxes Ordinance that apply for the purposes of payments on account of Medical Services Tax are —

section 83(1) and (2) (which deal with the amounts to be deducted from earned income etc)

section 84 (which deals with payments by intermediaries or to employees of non-resident employers)

section 85 (which deals with non-resident employees etc)

section 86 (which deals with mobile workforces)

section 87 (which contains supplementary provisions relating to payments on account of tax)

section 88 (which deals with the liability of employers with respect to sums deducted etc)

section 89 (which deals with the application of payments on account of tax)

section 90 (which deals with repayments of sums deducted)

apart from subsection (7)(a), section 91 (which deals with the POAT regulations)

section 92 (which deals with bankruptcy and liquidation)

apart from subsection (3), section 93 (which deals with non-resident employees)

24. Extension of power to make POAT Regulations

(1) The Governor's power under section 91 of the Taxes Ordinance to make POAT Regulations is extended to cover the following additional matters —

(a) deductions that an employer must make in respect of payments on account of Medical Services Tax;

(b) payments to be collected from employers in respect of their own liability to Medical Services Tax on their employees' earnings and benefits in kind.

(2) When making POAT Regulations, the Governor may specify which provisions of the regulations apply in relation to Medical Services Tax.

PART 8 OBTAINING INFORMATION

25. Returns of income

(1) Subsection (2) applies to a person if —

(a) the person has not made a return under section 12(1) of the Taxes Ordinance (under which persons can be required to make returns of their income); and

(b) the Commissioner believes that person may be liable to pay Medical Services Tax, whether or not —

(i) that person would be chargeable to income tax; or

(ii) that person's income would be within the personal allowance for income tax purposes).

(2) The Commissioner may by notice require a person to whom this subsection applies to make a return as if section 12(1) of the Taxes Ordinance applied to that person (whether or not it does) for the purpose of assessing Medical Services Tax due from that person.

26. Provision of accounts etc

(1) Subsection (2) applies to a person if the Commissioner believes that person is carrying on a business in the Falkland Islands, whether or not —

(a) the business —

(i) is carried on with a view to profit; or

(ii) makes a profit;

(b) that person would be chargeable to income tax; or

(c) that person's income (including any profit from the business) would be within the personal allowance for income tax purposes.

(2) The Commissioner may by notice require a person to comply with section 12(2) of the Taxes Ordinance (under which persons can be required to provide business accounts and other information) as if it applied to that person (whether or not it does) for the purpose of assessing Medical Services Tax due from —

(a) that person;

- (b) a partner of or shareholder in that person;
- (c) anyone employed by that person.

27. Notices as to sources of income

(1) Subsection (2) applies to a person who is liable to pay Medical Services Tax as an employee or a self-employed person who has not —

(a) received a notice under either —

(i) section 26(2); or

(ii) section 12(1) of the Taxes Ordinance;

(b) made a return for income tax purposes; or

(c) given notice under section 12(3) of the Taxes Ordinance (which requires persons to notify their sources of income in certain circumstances).

(2) A person to whom this subsection applies must comply with section 12(3) of the Taxes Ordinance as if it applied to that person (whether or not it does) for the purpose of assessing Medical Services Tax due from —

(a) that person;

(b) a partner of or shareholder in that person;

(c) anyone employed by that person.

28. End of year returns by employers

(1) This section applies to a person if the Commissioner believes that person is an employer.

(2) The Commissioner may by notice require a person to whom this section applies to provide details at or after the end of a calendar year of —

(a) all payments made to employees during the year;

(b) all benefits provided to employees during the year;

(c) all payments on account of Medical Services Tax deducted from payments made to employees during the year; and

(d) all payments on account of Medical Services Tax made by the employer during the year.

(3) If the Commissioner gives notice to a person under subsection (2), that person must comply with the notice either —

- (a) within sixty days of the date on which the notice was issued of the notice; or
- (b) if the Commissioner specifies a longer period in the notice, within that period.

29. End of year returns by employers: penalties

- (1) A person who does not comply with section 28 is liable to a penalty.
- (2) The amount of a penalty for which a person is liable under subsection (1) is —
 - (a) £100, if the person complies with the notice within the first three months after the expiry of the period in section 28(3); or
 - (b) £200, if the person has still not complied with the notice three months after the expiry of the period in section 28(3).
- (3) A penalty for which a person is liable under subsection (1) is recoverable as a statutory debt.
- (4) The payment of a penalty for which a person is liable under subsection (1) does not either —
 - (a) relieve the person of the obligation to comply with the notice to which the penalty relates (if that has not yet been done); or
 - (b) preclude the bringing of a prosecution for an offence against section 44 for refusing or neglecting to provide information.

30. Other returns

The Commissioner may by notice require a person to make a return under section 203(3) of the Taxes Ordinance (under which persons can be required to provide information) as if it applied to that person (whether or not it does) for the purposes of this Ordinance.

31. Provision of information by public officers etc

- (1) The Commissioner may require a public officer or an officer in the employment of a public body to supply, for the purposes of this Ordinance, information that the officer holds.
- (2) Subsection (1) does not oblige an officer to disclose information protected by a statutory obligation of secrecy or confidentiality.
- (3) The following provisions (which deal with official secrecy) are to be disregarded for the purposes of subsection (2) —
 - (a) section 202 of the Taxes Ordinance; and
 - (b) section 220 of the Fisheries (Conservation and Management) Ordinance (No 14 of 2005).

PART 9
USING INFORMATION

32. Relevant information and protected information

(1) In sections 33 to 35, “relevant information” means information that the Commissioner has been provided with (or obtained) —

- (a) for the purposes of administering the Medical Services Tax;
- (b) for other purposes (including for the purposes of income tax and corporation tax);
- (c) under a power contained in this Ordinance (or subsidiary legislation made under it); or
- (d) under another power (including a power contained in the Taxes Ordinance or subsidiary legislation made under it).

(2) In section 36, “protected information” means information that the Commissioner has been provided with (or obtained) —

- (a) for the purposes of administering the Medical Services Tax; or
- (b) under a power contained in this Ordinance(or subsidiary legislation made under it).

33. Use of relevant information

- (1) The Commissioner may use all relevant information for the purposes of this Ordinance.
- (2) The Commissioner may also use relevant information for the purposes of the Taxes Ordinance.

34. Relevant information protected by other legislation

- (1) This section applies to relevant information that is subject to a restriction or prohibition on its use under other legislation.
- (2) Relevant information to which this section applies may still be used under section 33.
- (3) If the other legislation would make it an offence to use the relevant information, that offence does not apply to its use under section 33.
- (4) Otherwise, the restriction or prohibition continues to apply.

35. Provision of relevant information to others

- (1) The Commissioner may provide relevant information to persons other than public officers who have —
 - (a) been appointed to carry out specific functions in relation to the administration of the Medical Services Tax; and

(b) entered into a contract with the Falkland Islands Government that adequately safeguards the confidentiality of the information.

(2) The Governor may authorise the Commissioner to provide relevant information to another person.

36. Prohibitions on misusing protected information

(1) This section applies to the following persons —

(a) those who have access to protected information; and

(b) those who have obtained access to it as a result of a breach of this section.

(2) A person to whom this section applies must not —

(a) permit another person to examine the information if that other person is not entitled to do so; or

(b) knowingly disclose the information in any other way to someone who is not entitled to it.

(3) Subsection (2) does not apply if —

(a) the provision of the information is permitted by section 35(1); or

(b) it has been authorised by the Governor under section 35(2).

(4) A person to whom this section applies must not use protected information for gain (whether by that person or another).

PART 10 ASSESSMENT OF MEDICAL SERVICES TAX

37. Assessment of Medical Services Tax for employees, self-employed persons and MLAs

(1) This section applies to individuals who are liable to Medical Services Tax as an employee or a self-employed person (or as both).

(2) In the case of individuals who are also chargeable to income tax, the Commissioner must assess those individuals for Medical Services Tax at the same time as assessing them for income tax.

(3) In the case of individuals who are not also chargeable to income tax, the Commissioner must assess those individuals for Medical Services Tax as if section 171(1) of the Taxes Ordinance applied to them.

38. Assessment of Medical Services Tax for employers

(1) The Commissioner may assess an employer for Medical Services Tax in relation to a calendar year (or a series of calendar years).

(2) An assessment for a calendar year may be made under subsection (1) after the first of the following events takes place —

- (a) the employer complies with a notice given under section 28(2) in relation to that year; or
- (b) the period in section 28(3) expires for that notice.

(3) An assessment may not be made for a calendar year more than 6 years after the end of that year.

39. Application of additional provisions of the Taxes Ordinance

(1) The provisions of the Taxes Ordinance listed in subsection (2) apply for the purposes of Medical Services Tax as if —

- (a) references to income tax included references to Medical Services Tax;
- (b) references to payments on account of tax included references to payments on account of Medical Services Tax; and
- (c) references to chargeable income included references to —
 - (i) earnings and benefits in kind; and
 - (ii) relevant profits.

(2) The provisions of the Taxes Ordinance that apply for the purposes of assessing Medical Services Tax are —

section 11 (which deals with the time at which income tax must be paid and interest on overdue tax)

section 171 (which deals with assessments for income tax)

section 173 (which deals with additional assessments)

section 174 (which deals with late assessments in cases of fraud or neglect)

section 175 (which deals with notices of assessment and objections to and amendments of assessments)

section 176 (which deals with the power to call for documents of taxpayers and others)

section 177 (which deals with the documents excluded from notices under section 176)

section 178 (which contains special provisions relation to third party notices under section 176)

section 179 (which provides that the burden of proof in relation to exemptions and abatements is on the taxpayer)

section 180 (which establishes the Tax Appeal Tribunal)

section 181 (which deals with appeals to the Tribunal)

section 182 (which contains provisions relating to the Clerk to the Tribunal)

section 183 (which deals with the postponement of tax on objection and appeal)

section 184 (which deals with the collection of tax and interest on tax)

section 185 (which deals with the recovery of tax from persons not resident in the Falkland Islands)

section 186 (which deals with repayments of income tax)

section 188 (which contains penal provisions relating to fraud etc)

section 189 (which provides for penalties for failures to make returns, making incorrect returns etc)

section 190 (which provides for the maximum penalty on conviction for offences in relation to which no other penalty is specified)

section 191 (which provides that nothing in the Taxes Ordinance affects other criminal proceedings but that no-one may be prosecuted more than once for the same offence)

section 192 (which provides that prosecutions must be commenced within 6 years)

section 192A (under which accounting records etc must be kept)

40. Set off

(1) Subsection (2) applies if —

(a) a person is entitled to a refund or repayment in respect of —

(i) an overpayment of Medical Services Tax; or

(ii) excess deductions or payments made on account of Medical Services Tax; and

(b) the Commissioner believes that the person is liable to pay an amount under either —

(i) this Ordinance (or subsidiary legislation made under it); or

(ii) the Taxes Ordinance (or subsidiary legislation made under it).

(2) If this subsection applies, the Commissioner may set off the refund or repayment against the liability.

PART 11 OFFENCES

41. Divulging protected information

(1) It is an offence to divulge protected information in breach of section 36(2).

(2) A person convicted of an offence against subsection (1) is liable on conviction to a fine of up to level 4 on the standard scale.

42. Using protected information for gain

(1) It is an offence to use protected information for gain in breach of section 36(4).

(2) A person convicted of an offence against subsection (1) is liable to one or more of the following penalties —

(a) forfeiture of the amount gained;

(b) a fine of up to level 6 on the standard scale;

(c) imprisonment for up to 1 year.

43. Obtaining information by pretending to act on behalf of Commissioner

(1) It is an offence to pretend to be acting on behalf of the Commissioner under section 22(2) in order to gain access to relevant information or to obtain information from another person.

(2) A person (whether or not a public officer) convicted of an offence against subsection (1) is liable to one or more of the following penalties —

(a) forfeiture of the amount (if any) gained (whether by that person or another) as a result;

(b) a fine not exceeding level 6 on the standard scale;

(c) imprisonment for up to 1 year.

44. Failure to provide information

(1) This section applies to a person required by the Commissioner to provide information under this Ordinance (or subsidiary legislation made under it).

(2) It is an offence to refuse or neglect to provide the information.

(3) Subsection (2) does not apply if the person had a reasonable excuse for not providing the information.

(4) A person convicted of an offence under subsection (2) is liable to either or both of the following penalties —

(a) a fine of up to level 7 on the standard scale; and

(b) imprisonment for up to 3 months.

45. Providing false or misleading information

(1) This section also applies to a person required by the Commissioner to provide information under this Ordinance (or subsidiary legislation made under it).

(2) It is an offence knowingly to provide information that is false or misleading in a material particular.

(3) It is also an offence if the person who provides the information is reckless as to whether the information is false or misleading.

(4) A person convicted of an offence under subsection (2) or (3) is liable to either or both of the following penalties —

(a) a fine of up to level 7 on the standard scale; and

(b) imprisonment for up to 3 months.

46. Hindering or obstructing an authorised officer

(1) It is an offence to hinder or obstruct the Commissioner in —

(a) administering the Medical Services Tax;

(b) carrying out a function in relation to the administration of the Medical Services Tax; or

(c) exercising a power under this Ordinance (or subsidiary legislation made under it).

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties —

(a) a fine of up to level 7 on the standard scale; and

(b) imprisonment for up to 3 months.

47. Offences by bodies corporate

(1) This section applies if —

(a) an offence against this Ordinance (or subsidiary legislation made under it) is committed by a body corporate; and

(b) it is proved that either —

(i) the offence was committed with the consent or connivance of an officer of the body corporate; or

(ii) the offence was attributable to neglect on the part of an officer of the body corporate.

(2) If this section applies, the officer as well as the body corporate is —

(a) guilty of the offence; and

(b) liable to be proceeded against and punished accordingly.

(3) For the purposes of this section, “officer” includes, in relation to a body corporate —

(a) a person who was, at the time, acting as an officer of the body corporate; and

(b) a person who is (or who was, at the time) purporting to act as an officer of the body corporate.

(4) If the affairs of a body corporate are managed by its members, subsections (1) and (2) apply in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were an officer of the body corporate.

PART 12 PENALTIES AND PROSECUTIONS

48. Penalties

(1) Subsection (2) applies if a person is liable for more than one penalty in respect of what is substantially the same act (or failure to act) under —

(a) this Ordinance (or subsidiary legislation made under it);

(b) the Taxes Ordinance (or subsidiary legislation made under it);

(c) provisions of the Taxes Ordinance (or subsidiary legislation made under it) as they apply for the purposes of this Ordinance.

(2) If this subsection applies, the Commissioner must waive all but one of the penalties.

49. Prosecutions

(1) Subsection (2) applies in relation to acts (or failures to act) that are offences against more than one provision of —

(a) this Ordinance (or subsidiary legislation made under it);

(b) the Taxes Ordinance (or subsidiary legislation made under it); or

(c) provisions of the Taxes Ordinance (or subsidiary legislation made under it) as they apply for the purposes of this Ordinance.

(2) If this subsection applies, a person may not be prosecuted more than once for what is substantially the same offence.

(3) Subsection (2) does not prevent a prosecution being brought on each occasion that an offence is committed.

PART 13 AMENDMENT OF THE TAXES ORDINANCE

50. Amendment of the Taxes Ordinance

This Part amends the Taxes Ordinance.

51. Section 59 amended – Deductions not allowed

Section 59 is amended by omitting paragraph (i) and substituting the following —

“(i) any amount paid or payable under the Medical Services Tax Ordinance (No ?? of 2010).”

52. Section 90 amended – Repayment of sums deducted

(1) This section amends section 90.

(2) The existing section is renumbered as subsection (1).

(3) The following subsection is added —

“(2) If the Commissioner believes that a person entitled to a repayment under subsection (2) is liable to pay an amount under the Medical Services Tax Ordinance (or subsidiary legislation made under it), the Commissioner may set off the repayment against that liability.”

53. Section 186 amended – Repayment of income tax

Section 186 is amended by inserting the following subsection after subsection (1) —

“(1A) If the Commissioner believes that a person entitled to a refund under subsection (1) is liable to pay an amount under the Medical Services Tax Ordinance (or subsidiary legislation made under it), the Commissioner may set off the refund against that liability.”

54. Section 187 amended – Refund of overpayments of corporation tax

Section 187 is amended by inserting the following paragraph after subsection (2) —

“(2A) If the Commissioner believes that a company entitled to a repayment under subsection (2) is liable to pay an amount under the Medical Services Tax Ordinance (or subsidiary legislation made under it), the Commissioner may set off the repayment against that liability.”

55. Section 203 amended – Disclosure of information

(1) This section amends section 203.

(2) Subsection (2A) is repealed and the following substituted —

“(2A) The following provisions are to be disregarded for the purposes of subsection (2) —

(a) section 33 of the Medical Services Tax Ordinance (No ?? of 2010); and

(b) section 220 of the Fisheries (Conservation and Management) Ordinance (No 14 of 2005).”

(3) The following subsection is inserted after subsection (2A) —

“(2B) The Commissioner may make use, for the purposes of this Ordinance, of information provided (or obtained) under the Medical Services Tax Ordinance (or subsidiary legislation made under it).”

(4) Subsection (3) is amended by —

(a) omitting paragraph (b) and substituting the following —

“(b) the payments and allowances made to those persons in respect of that employment”;
and

(b) inserting the following paragraph after paragraph (b) —

“(ba) benefits provided to those persons in respect of that employment;”.

(4) Subsection (5) is repealed.

PART 14

AMENDMENT OF THE MEMBERS’ REMUNERATION ORDINANCE

56. Amendment of the Members’ Remuneration Ordinance

This Part amends the Members’ Remuneration Ordinance.

57. Section 7 substituted

(1) Section 7 is repealed and the following substituted —

“7. Income Tax and Medical Services Tax on amounts paid to Members

(1) This section deals with the treatment of amounts paid to Members under this ordinance for the purposes of —

(a) income tax, under the Taxes Ordinance (Title 69.1);

(b) Medical Services Tax, under the Medical Services Tax Ordinance (No ?? of 2010).

(2) Amounts paid to Members under this ordinance are to be treated for those purposes as if they had been earned on a self-employed basis.”

58. Section 9 amended – Power to amend Schedule

Section 9 of the Members’ Remuneration Ordinance is amended by inserting the following after subsection (1) —

“(1A) An order made under subsection (1) may also include consequential amendments to the Medical Services Tax Ordinance.”

PART 15
**AMENDMENT OF THE PAYMENT ON ACCOUNT OF TAX (EMPLOYEES’
DEDUCTIONS) REGULATIONS**

59. Amendment of the Payment on Account of Tax (Employees’ Deductions) Regulations

The Schedule amends the Payment on Account of Tax (Employees’ Deductions) Regulations (No 23 of 1997).

PART 16
SUBSIDIARY LEGISLATION

60. Subsidiary legislation

The Governor may make regulations and orders that are necessary or convenient for the purposes of this Ordinance.

SCHEDULE
**AMENDMENT OF THE PAYMENT ON ACCOUNT OF TAX (EMPLOYEES’
DEDUCTIONS) REGULATIONS**

1. Amendment of the Payment on Account of Tax (Employees’ Deductions) Regulations

This Schedule amends the Payment on Account of Tax (Employees’ Deductions) Regulations.

2. Regulation 2 amended – Interpretation

(1) This section amends regulation 2.

(2) In paragraph (1) —

(a) the following definitions are inserted before the definition of “monthly paid employee” —

““earnings” —

- (a) if regulation 10 applies, must be construed in accordance with that regulation;
- (b) if regulation 12B applies, means an amount determined by (or on behalf of) the Commissioner;
- (c) otherwise, has the same meaning as under section 3 of the Medical Services Tax Ordinance (No ?? of 2010);

“Medical Services Tax” means the tax imposed under the Medical Services Tax Ordinance;”

(b) the definition of “POAT deduction” is amended by adding “or Part 7 of the Medical Services Tax Ordinance”;

(c) the following definition is inserted after the definition of “POAT deduction” —

““remuneration” —

- (a) does not include a pension or annuity;
- (b) if regulation 10 applies, must be construed in accordance with that regulation;
- (c) if regulation 12B applies, means an amount determined by (or on behalf of) the Commissioner;
- (d) otherwise, means, in relation to a person, the gross amount of that person’s earned income, before any deductions;”.

(3) Paragraph (2) is revoked.

3. Regulation 3 amended – Application of regulations

(1) This section amends regulation 3.

(2) The following paragraph is inserted after paragraph (1) —

“(1A) The following regulations listed in paragraph (1B) apply for the purpose of determining deductions to be made for the purposes of payments on account of Medical Service Tax —

- (a) regulation 3(4);
- (b) regulation 8A;
- (c) regulation 9;

(d) regulations 10(1), (2), (2A), (2B), (6) and (7); and

(e) regulations 11A, 12, 12A, 12B and 13.”

(3) Paragraph (2) is amended by inserting “in relation to income tax” after “made”.

(4) The following paragraph is inserted after paragraph (3) —

“(4) Deductions must be made in relation to Medical Services Tax in respect of all employees who are liable to Medical Services Tax, regardless of how many hours the employee worked during the pay period.”

4. New regulation 8A

The following regulation is inserted after regulation 8 —

“8A. Additional deductions in respect of employee’s Medical Services Tax

(1) In addition to the POAT deduction calculated under regulation 4, 5, 6, 7 or 8, the POAT deduction must also include the amount produced by the following formula —

$$M_{-ee} \times E$$

(2) In paragraph (1) —

“*E*” means the gross amount of the employee’s earnings during the period;

“*M_{-ee}*” means the rate at which Medical Services Tax is payable by employees under section 5(a) of the Medical Services Tax Ordinance.”

5. Regulation 9 amended – Non-resident employees

(1) This section amends regulation 9.

(2) Paragraph (2) is revoked and the following substituted —

“(2) The employer of an employee to whom this regulation applies must make a POAT deduction from each payment of remuneration to the employee.”

(3) The following paragraphs are inserted after paragraph (2) —

“(2A) The amount of the deduction to be made under paragraph (2) is the total of the following amounts —

(a) in respect of income tax, the amount produced by the following formula —

$$T_{RI} \times R$$

(b) in respect of Medical Services Tax, the amount produced by the following formula —

$$M_{-ee} \times E$$

(2B) In paragraph (2A) —

“*E*” means the gross amount of the employee’s earnings during the period;

“*M_{-ee}*” means the rate at which Medical Services Tax is payable by employees under section 5(a) of the Medical Services Tax Ordinance;

“*R*” means the employee’s remuneration for the period; and

“*T_{RI}*” means the lower rate of income tax.”

6. Regulation 10 amended – ‘Free of tax’ remuneration

(1) This section amends regulation 10.

(2) Paragraph (1) is amended by inserting “or Medical Services Tax” after “income tax”.

(3) Paragraph (2) is also amended by inserting “or Medical Services Tax” after “income tax”.

(4) The following paragraphs are inserted after paragraph (2) —

“(2A) If remuneration is paid wholly net or free of Medical Services Tax, the amount by reference to which the POAT deduction is to be calculated for the purposes of Medical Services Tax is the amount produced by the following formula —

$$N \times \frac{100}{100 - M_{-ee}}$$

(2B) In subsection (2A) —

“*M_{-ee}*” means the rate at which Medical Services Tax is payable by employees under section 5(a) of the Medical Services Tax Ordinance; and

“*N*” means the net amount of the employee’s earnings.”

(5) Paragraph (3) is amended by —

(a) inserting the word “income” after “of” where it first appears; and

(b) inserting the words “for the purposes of income tax” after “calculated”.

(6) Paragraph (4) is amended by —

- (a) omitting “subsection” in the first place where it appears and substituting “paragraph”; and
- (b) omitting “subsection (5)” and substituting “paragraphs (5) and (6)”.

(7) The following paragraph is inserted after paragraph (5) —

“(6) If remuneration is paid wholly free of both Medical Services Tax and income tax, the amount by reference to which the POAT deduction is to be calculated for the purposes of both Medical Services Tax and income tax is the amount produced by performing both calculations in this regulation in the following order —

- (a) the calculation in paragraph (2A); and
- (b) the calculation in paragraph (3).”

7. New regulation 11A

The following regulation is inserted after regulation 11 —

“11A. Payments on account of employer’s Medical Services Tax

(1) In addition to the POAT deduction made from each payment made to an employee, the employer is also liable to make a payment on account of employers’ Medical Services Tax on the earnings represented by that payment.

(2) The amount of each payment on account to be made under paragraph (1) is the amount produced by the following formula —

$$M_{er} \times E$$

(2B) In paragraph (2A) —

“*E*” means the gross amount of the employee’s earnings during the period;

“*M_{er}*” means the rate at which Medical Services Tax is payable by employers under section 5(b) of the Medical Services Tax Ordinance.

(3) Payments on account for which an employer is liable under paragraph (1) must be accounted for in the same way as deductions made by that employer.”

8. Heading above regulation 12 amended

The heading above regulation 12 is amended by adding “and payments on account”.

9. Regulation 12 amended – Accounting for deductions and payments on account

(1) This section amends regulation 12.

(2) Paragraph (1) is revoked and the following substituted —

“(1) This regulation applies to each person required to do one or more of the following things —

(a) deduct a sum under —

(i) these Regulations;

(ii) Part 4 of the Taxes Ordinance; or

(iii) Part 7 of the Medical Services Ordinance; or

(b) make a payment on account of Medical Services Tax payable as an employer under —

(i) regulation 11A; or

(ii) Part 7 of the Medical Services Ordinance.”

(3) The following paragraph is inserted after paragraph (1) —

“(1A) A person to whom this paragraph applies must, by the 14th of each month —

(a) deliver to the Commissioner a return in the prescribed form containing all particulars required to be completed in the return; and

(b) remit to the Commissioner the total amount of the deductions and payments on account required to be made for the previous month.”

10. New Regulation 12B

The following regulation is inserted after regulation 12A.

“12B. Determination of remuneration and earnings

(1) This regulation applies if either —

(a) a person to whom regulation 12 applies fails to deliver a return to the Commissioner in accordance with regulation 12(1A)(a); or

(b) the Commissioner thinks that the return is incomplete or inaccurate.

(2) If this regulation applies —

(a) the Commissioner may make a determination of the amount of the remuneration and earnings of each employee who was (or should have been) included in the return; and

(b) that amount is to be treated for the purposes of these regulations as the employee’s remuneration and earnings for the period covered by the return.

- (3) If the Commissioner makes a determination under paragraph (2) —
- (a) the Commissioner must give notice of that determination to the person who made (or should have made) the return in relation to which the determination was made;
 - (b) that person may —
 - (i) object to the determination; and
 - (ii) appeal to the Tax Appeal Tribunal.
- (4) Sections 175, 181 and 183 apply to objections and appeals made under paragraph (3)(b), as if —
- (a) references to an assessment to tax included references to a determination made under paragraph (2); and
 - (b) references to the tax charged under an assessment included the payments on account of income tax and Medical Services Tax due in respect of the remuneration and earnings determined by the Commissioner.

11. Regulation 13 amended – Information and preservation of records

- (1) This section amends regulation 13.
- (2) Paragraph (4) is revoked and the following substituted —
- “(4) Paragraph (5) applies to a person required to do one or more of the following things —
- (a) deduct a sum under —
 - (i) these Regulations;
 - (ii) Part 4 of the Taxes Ordinance; or
 - (iii) Part 7 of the Medical Services Ordinance; or
 - (b) make a payment on account of Medical Services Tax payable as an employer under —
 - (i) regulation 11A; or
 - (ii) Part 7 of the Medical Services Ordinance.”
- (3) The following paragraph is inserted after paragraph (4) —

“(5) A person to whom this paragraph applies must —

(a) make a written record of —

(i) the deduction or payment on account; and

(ii) particulars of the employee in respect of whom it was made; and

(b) keep that record until the expiry of a period ending 6 years after the end of the calendar year in which the deduction or payment on account was made.”

OBJECTS AND REASONS

The Bill would impose a tax known as the Medical Services Tax.

Part 1 deals with introductory provisions.

Clause 3(1) defines terms used that are elsewhere in the Bill. *Clause 3(2)* provides that other terms used in the Taxes Ordinance (Title 69.1) have the same meaning in the Bill.

Part 2 deals with the Medical Services Tax itself.

Clause 4 would provide for a tax, to be known as Medical Services Tax, to be payable by each of the following groups: employees; employers; and self-employed persons. The effect of definitions in *clause 3(1)* is that MLAs are treated as being self-employed for the purposes of the Bill and that the holders of other offices are treated as being employed.

Clause 5 would provide for the rates at which Medical Services Tax would be payable: employees would pay 1% (with their employers paying an additional 1½%); and self-employed persons would pay 1½%.

Part 3 deals with earnings and benefits in kind for employees and employers.

Clause 6 defines earnings for the purposes of Medical Services Tax. That definition covers income from employment (including redundancy payments that are not exempt from income tax) that is earned either in the Falkland Islands or from employment based in the Falkland Islands.

Clause 7 deals with the valuation of earnings that are received other than in money and *Clause 8* deals with timing issues relating to earnings. These issues are dealt with for the purposes of Medical Services Tax in the same way as for income tax.

Clause 9(1) would mean that employees could claim the same deductions for the purposes of Medical Services Tax that they can claim for the purposes of income tax under section 58 of the Taxes Ordinance. Under *clause 9(2)*, employers would not be able to claim those deductions and

clause 9(3) would preclude any other deductions from being claimed for the purposes of Medical Services Tax by employees and their employers.

Clause 10 defines benefits in kind for the purposes of Medical Services Tax and *clause 11* deals with the valuation of benefits in kind. Benefits in kind are dealt with in the same way as for income tax.

Clause 12 deals with the treatment of pension contributions (which are defined in *clause 3*). Medical Services Tax would not be payable on pension contributions made by employers but pension contributions made by employees would not be deductible for the purposes of Medical Services Tax.

Clause 13 would provide for the anti avoidance provisions in sections 22 and 22A of the Taxes Ordinance (which deal with arrangements involving agencies, personal service companies and other intermediaries) to apply also for the purposes of Medical Services Tax.

Part 4 deals with relevant profits for self-employed persons.

Clause 14 defines relevant profits.

Under *Clause 15*, MLAs (who are defined in *clause 3* as being self-employed persons for the purposes of the Bill) would be liable for Medical Services Tax as if their allowances and expenses under the Members' Remuneration Ordinance were earned on a self-employed basis. A corresponding amendment to the Members' Remuneration Ordinance would be made by *clause 57*.

Clause 16 deals with the calculation of relevant profits and would provide for some (but not all) of the provisions of the Taxes Ordinance to apply for the purposes of Medical Services Tax as well.

Clause 17 deals with the periods of account for which relevant profits must be calculated. Normally, these will be calendar years but there would be exceptions (similar to those that apply for the purposes of income tax).

Clause 18 deals with the apportionment of profits within partnerships.

Clause 19 deals with situations in which an individual carries on more than one business (or is also an MLA) and *clause 20* deals with situations in which someone who is self-employed is also an employee.

Part 5 deals with exemptions.

Clause 21 sets out the sources of income that would be exempt from Medical Services Tax.

Part 6 deals with the administration of Medical Services Tax.

Clause 22 would provide for the Commissioner of Taxation to be responsible for administering the Medical Services Tax and for other public officers to carry out functions and exercise powers on behalf of the Commissioner.

Part 7 deals with payments on account of Medical Services Tax.

Clause 23 would provide for payments to be made on account of Medical Services Tax in the same way as payments are made on account of income tax. It would also apply the corresponding provisions of the Taxes Ordinance for that purpose. Employers would have to make deductions from payments made to employees and the deductions would be collected from them together with payments on account of the employers' own liability to Medical Services Tax.

Clause 24 would extend the existing power under section 91 of the Taxes Ordinance to make regulations for the payment on account of tax to cover the deduction of payments on account of Medical Services Tax from employees and payments on account of Medical Services Tax by employers.

Part 8 deals with the way in which information could be obtained for the purposes of the Bill.

Clauses 25 and 26 would allow for powers under sections 12(1) and (2) of the Taxes Ordinance (which deal with tax returns and the provision of business accounts) to be used to obtain information for the purposes of Medical Services Tax.

Under section 12(3) of the Taxes Ordinance, there is an obligation to report sources of income to the Commissioner of Taxation in certain circumstances and *clause 27* would extend that obligation to cover Medical Services Tax as well.

Clause 28 would create a new power under which employers could be required to provide end of year returns for the purposes of Medical Services Tax. *Clause 29* deals with the penalties that could be imposed in the event of non compliance.

Clause 30 would allow for the power under section 203(3) of the Taxes Ordinance (under which persons can be required to provide information) to be exercised for the purposes of Medical Services Tax.

Clause 31 would allow for information to be obtained from other public officers.

Part 8 deals with the way in which information could be used for the purposes of the Bill.

Clause 32 defines "relevant information" and "protected information".

Under *clause 33*, all relevant information could be used for the purposes of administering the Medical Services Tax and *clause 34* would override restrictions and prohibitions on the use of information in other legislation.

Clause 35 would allow for information to be released to others, subject to safeguards.

However, *clause 36* is intended to protect information from misuse.

Part 10 deals with the assessment of Medical Services Tax.

Clause 37 deals with the assessment of Medical Services Tax due from employees and self-employed persons. It provides for this to be done either at the same time as income tax is assessed or for it to be done in the same way.

Clause 38 would allow the Medical Services Tax due from employers to be assessed.

Clause 39 would make further provision for the provisions of the Taxes Ordinance relating to assessment to apply for the purposes of Medical Services Tax as well.

Clause 40 deals with the set-off of refunds or repayments relating to Medical Services Tax against liabilities under the Taxes Ordinance.

Part 11 deals with offences against the Ordinance.

Under *clause 41*, it would be an offence to divulge protected information (which is defined in *clause 32(2)*) and the maximum penalty for such an offence would be a level 4 fine (currently, £1,500).

Under *clause 42*, it would be an offence to use protected information for gain and, under *clause 43*, it would be an offence to pretend to be acting in an official capacity in order to gain access to information or to obtain information from someone else. In both cases, the maximum penalty would be forfeiture of the amount gained and/or a level 6 fine (currently, £7,500) and/or up to 1 year in prison.

Under *clause 44*, it would be an offence to refuse or neglect to provide information required under the Ordinance without a reasonable excuse. Providing false or misleading information (either knowingly or recklessly) would be an offence against *clause 45*. *Clause 46* would create an offence of obstruction. In all three cases, the maximum penalty would be a level 7 fine (currently, £12,500) and/or up to 3 months in prison.

Under *clause 47*, an officer of a body corporate (or someone purporting to act in that capacity) could be held responsible for offences committed by the body corporate.

Part 12 deals with penalties and prosecutions.

Clause 48 would prevent more than one penalty from being imposed for substantially the same infringement and *clause 49* would protect a person from being prosecuted for substantially the same offence committed on the same occasion.

Part 13 would amend the Taxes Ordinance.

Clause 51 would amend section 59 of the Taxes Ordinance to provide that Medical Services Tax is not an allowable deduction for the purposes of income tax or corporation tax.

Clauses 52, 53 and 54 would amend sections 90, 186 and 187 of the Taxes Ordinance to allow for the set off of refunds or repayments of income tax or corporation tax against liabilities for Medical Services Tax.

Clause 55 would amend section 203 of the Taxes Ordinance to allow for information collected under the Medical Services Ordinance to be used for the purposes of the Taxes Ordinance. It would also extend a power to collect information and repeal the provision under which penalties for failure to comply with notices to provide information do not apply in certain circumstances.

Part 14 would amend the Members' Remuneration Ordinance.

Clause 57 would make a consequential amendment to section 7 of the Members' Remuneration Ordinance.

Clause 58 would amend section 9 of the Members' Remuneration Ordinance to allow for orders amending the Schedule to that Ordinance to include consequential amendments to the Medical Services Tax Ordinance.

Part 15 (and the Schedule) would amend the Payments on Account of Tax (Employees' Deductions) Regulations.

Clause 59 would amend the Payments on Account of Tax (Employees' Deductions) Regulations (No. 23 of 1997) in accordance with the *Schedule*.

Part 16 deals with subsidiary legislation.

Under *clause 60*, the Governor would have the power to make regulations and orders to implement the Ordinance.

The Schedule contains the detailed amendments to the Payment on Account of Tax (Employees' Deductions) Regulations.

Paragraph 2 would amend the interpretation provisions in regulation 2.

Paragraph 3 would amend regulation 3 to provide which provisions of the regulations apply in relation to Medical Services Tax and also to provide that deductions must be made for Medical Services Tax regardless of how many hours are worked by the employee.

Paragraph 4 would insert a new regulation 8A, dealing with the additional deductions to be made in respect of employees' Medical Service Tax.

Paragraph 5 would amend regulation 9 to provide for 2 new formulae to be used to calculate the deductions for income tax and Medical Services Tax to be made from remuneration paid to non-resident employees.

Paragraph 6 would make a number of amendments to regulation 10 to deal with the grossing up of income paid free of income tax and/or Medical Services Tax.

Paragraph 7 would insert a new regulation 11A to deal with the payments on account of employers' Medical Service Tax.

Paragraphs 8 and 9 would amend regulation 12 to deal with accounting for deductions and payments on account made in respect of Medical Services Tax.

Paragraph 10 would insert a new regulation 12B, under which the Commissioner of Taxation would be able to make determinations of remuneration and earnings for the purposes of payments on account.

Paragraph 11 would amend regulation 13 to provide for the keeping of records in relation to deductions for and payments on account of Medical Services Tax as well as for income tax.