

# EXECUTIVE COUNCIL

## CONFIDENTIAL

**Title of Report:** Taxes (Amendment) Bill  
**Paper No:** 278/10  
**Date:** 25 November 2010  
**Report of:** Financial Secretary/Taxation Officer/Legislative Drafter

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### 1.0 Purpose

The purpose of this paper is to seek Executive Council's approval for a draft Taxes (Amendment) Bill reflecting an initial sub-set of the amendments to the Taxes Ordinance that Executive Council has either approved or is being asked separately to approve.

### 2.0 Recommendations

Executive Council is recommended to approve:

- (a) the publication in the *Gazette* of the Taxes (Amendment) Bill (a draft of which is attached);
- (b) the presentation of the Bill to the Legislative Assembly at its session in February 2011; and
- (c) the publication of a notice giving advance notice that changes to the Taxes Ordinance are being put forward and that, if approved by the Legislative Assembly, they will be back-dated to 1 January 2011.

### 3.0 Summary of Financial Implications

No new Financial Implications

### 4.0 Background

4.1 Executive Council has already considered ExCo papers 141/10 and approved in principle a package of "minor amendments" to the Taxes Ordinance.

4.2 It has also already considered 208/10 and approved in principle an amendment to the Taxes Ordinance to clarify that directors of a company are

employees of that company for all purposes (including the benefits in kind provisions).

4.3 Executive Council is being asked to consider three other papers (272/10, 280/10 and 281/10) at the same meeting as the one for which this paper is being submitted. Approval is being sought in these papers for further changes to the Taxes Ordinance to deal with exemptions for bounties payable to reserve police officers and retained firefighters.

4.4 It is anticipated that Executive Council will be asked to approve other amendments to tax legislation in coming months.

4.5 A programme of work has started to deal with the amendments that have already been approved in principle and those that are being proposed in the papers being submitted separately but at the time as this one. However, in line with Executive Council's decision as to the priority that work is not being given special priority.

4.6 The attached draft Bill deals with the first part of this programme. The opportunity has also been taken to deal with a small number of technical amendments that were identified during the course of work on the Bill (see paragraph 6.2). Other amendments will have to be dealt with in one or more further Bills to be submitted for consideration separately and at a later date.

4.7 It is proposed that the amendments should apply from 1 January 2011, so that they apply to an entire tax year. Because it will not be possible to present the Bill to the Legislative Assembly until February 2011, it will be necessary to back-date the amendments it would make. For that reason, it is recommended that, as well as publishing the Bill in the *Gazette*, a notice should be published drawing attention to the proposals and to the fact that they would be back-dated.

## **5.0 Financial Implications**

5.1 The Bill does not give rise to any new Financial Implications.

5.2 For most of the amendments, Executive Council has either already approved them in principle (and considered the Financial Implications at that stage) or is being asked separately to approve them in principle (and is being asked to consider the Financial Implications).

5.3 The small number of technical amendments listed in paragraph 6.2 do not have any Financial Implications.

## **6.0 Legal Implications**

6.1 The changes to tax legislation that would be made by the Bill are identified in the Objects and Reasons at the end of the draft Bill attached to this paper.

6.2 In relation to most of the amendments that would be made by the Bill, Executive Council has already given its approval principle or it is being asked for that approval in a separate policy paper. The exceptions are as follows:

(a) One of the amendments in clause 4 would remove an obsolete definition from the interpretation section of the Taxes Ordinance. The provision that used to tax maintenance payments was repealed in 2004 but the corresponding definition of “maintenance payments” (which is not now used anywhere in the Ordinance) was not repealed at the same time.

(b) Clause 24 would make two amendments:

(i) One of these deals with the change from the Elected Councillors’ Allowances Ordinance to the Members’ Remuneration Ordinance.

(ii) The other deals with a provision that has been obsolete for several years since independent taxation was introduced for husbands and wives.

(b) Clauses 25 and 26 would deal with an error (relating to deductions for Retirement Pension Contributions) that emerged in relation to an amendment that was made in 2006. The back-dated amendment to be made by clauses 25 and 26 would restore what was thought to have been the law. This does not affect taxpayers adversely because they have received the deductions in any event, so they are not being deprived of anything.

(c) Clause 27 would make an amendment to the Retirement Pensions Ordinance repealing a provision that deals with deductions for Retirement Pension Contributions that would be dealt with in the Taxes Ordinance. This amendment is connected to the changes being made to deductions for Retirement Pensions Contributions being made by clauses 7 and 22.

(d) Clause 28 would make an amendment to the Medical Services Tax Ordinance (assuming that the Bill for that Ordinance is passed by the Legislative Assembly). This amendment would bring the time limit for employers’ end of year returns under the Medical Services Tax Ordinance into line with the time limit for employers’ end of year returns under the Taxes Ordinance.

6.3 Some of the other changes that would be made by the Bill reflect Extra-Statutory Concessions or existing practice in the Taxation Office or they remove obsolete provisions from the Taxes Ordinance. Changes in these categories are not identified separately in this section.

6.4 The key changes to the tax legislation that would make an actual difference to taxpayers are as follows:

(a) Overseas property let for residential use would be treated as a business (clause 4).

(b) The date by which tax must normally be paid each year is postponed from 1 September to 1 October (clauses 6 and 21).

(c) Individuals would no longer be able to reclaim excess tax credits on distributions (clause 9).

(d) Bounties payable to reserve police officers and retained firefighters would become exempt from tax (clause 10). Approval for this change is being sought separately (ExCo paper 272/10).

(e) Businesses would be able to claim deductions for charitable donations made in kind (clause 11).

(f) Certain advertising and promotional expenses would be included as a specific head of outgoings and expenses that can be deducted (clauses 18 and 19).

(g) A flat-rate deduction for wear and tear on overseas property let for residential use would be introduced (clause 19).

(h) A cross-reference would be corrected to clarify that capital allowances cannot be claimed twice for scientific expenditure (clause 20).

(i) A balancing charge for residential property on which capital allowances are claimed would be introduced (clause 20).

(j) Overseas property let for residential use would be excluded from the capital allowances system (clause 20).

(k) Non-residents who pay compulsory (but not voluntary) Retirement Pension Contributions while present in the Islands for part of a year would be able to claim a deduction for those contributions (clause 22).

***Further work still to be done***

6.5 Some amendments have been approved by Executive Council but have had to be deferred because more work on them still needs to be done. These are as follows:

(a) ***Redacted***

(b) Section 97A will need to be amended to allow for deductions to be made for costs (other than interest) associated with raising loan finance.

(c) Section 195 will need to be amended further to deal with contributions made to the Falkland Islands Pensions Scheme by individuals who are temporarily absent from the Islands.

6.6 It has been possible to draft an amendment dealing with the proposal to exempt bounties payable to reserve police officers and retained firefighters.

6.7 However, it has not yet been possible to draft amendments to deal with proposals made in papers being submitted to Executive Council relating to the collection of POAT and Medical Services Tax for oil workers and deductions for expenditure on Individual Transferable Quota.

***Back-dating***

6.8 Consideration has been given to whether or not the Bill (apart from Part 3) can be back-dated to 1 January 2011 (as proposed) and it is considered that, in relation to the provisions contained in the Bill, this can be done.

6.9 Section 21(2) of the Interpretation and General Clauses Ordinance allows for legislation to be given retrospective effect. However, it also provides that no act or omission during a period of back-dating can become a criminal offence after the event. That would not be the case under the Bill.

6.10 It is recommended that, as well as publishing the Bill in the *Gazette*, a suitable announcement should be made to highlight that the changes to be made by the Bill (if it is passed) would be back-dated to 1 January 2011.

6.11 In relation to the change that would be made for the period between 1 March 2006 and 31 December 2010, that has been considered separately and and it is considered that too can be dealt with retrospectively, as it reinstates deductions that have been given anyway.

**7.0 Human Resources Implications**

None

**EXCO DRAFT: 11.11.2010 (RMB)**

**Taxes (Amendment) Bill 2010**

(No: of 2010)

**ARRANGEMENT OF PROVISIONS**

**PART 1 – INTRODUCTORY PROVISIONS**

1. Title
2. Commencement

**PART 2 – AMENDMENTS TO THE TAXES ORDINANCE FROM 1 JANUARY 2011**

3. Amendment of the Taxes Ordinance
4. Section 2 amended – Interpretation
5. Section 8 amended – The charge to income tax
6. Section 11 amended – Time for payment of income tax and interest on overdue tax
7. Section 15 substituted
8. New section 15A
9. Section 49 amended – Tax credits for certain recipients of qualifying distributions
10. Section 57 amended – Exemptions
11. New section 57ZA
12. Section 57A amended – Donations to charities
13. Section 65 amended – Meaning of “relevant earnings”
14. Section 68 amended – Members’ contributions, and payments under schemes
15. Section 81 amended – Requirements relating to contributions
16. Section 97 substituted
17. New sections 97A to 97D
18. Section 99 substituted
19. New sections 99A and 99B
20. Section 116 amended – Initial allowances and writing-down allowances for capital expenditure
21. Section 183 amended – Postponement of tax on objection and appeal
22. Section 195 amended – Special provisions relating to non-residents
23. Section 200 amended – Residence of individuals
24. Section 206 amended – Earned income and unearned income

**PART 3 – AMENDMENT OF THE TAXES ORDINANCE BETWEEN 1 MARCH 2006 AND  
31 DECEMBER 2010**

25. Section 3 of the Taxes (Amendment) Ordinance 2006
26. Section 15 of the Taxes Ordinance amended

PART 4 – AMENDMENT OF THE RETIREMENT PENSIONS ORDINANCE

27. Section 16 of the Retirement Pensions Ordinance repealed

PART 5 – AMENDMENT OF THE MEDICAL SERVICES TAX ORDINANCE

28. Section 28 of the Medical Services Tax Ordinance amended – End of year returns by employers

# TAXES (AMENDMENT) BILL 2010

(No:            of 2010)

*(assented to:                    2010)*

*(commencement: see section 2)*

*(published:                      2010)*

A BILL

for

AN ORDINANCE

To amend the Taxes Ordinance (Title 69.1); and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

## **PART 1 INTRODUCTORY PROVISIONS**

### **1. Title**

This Ordinance is the Taxes (Amendment) Ordinance 2010.

### **2. Commencement**

(1) Part 3 of this Ordinance is deemed to have come into force on 1 March 2006.

(2) The rest of this Ordinance is deemed to have come into force on 1 January 2011.

## **PART 2 AMENDMENTS TO THE TAXES ORDINANCE FROM 1 JANUARY 2011**

### **3. Amendment of the Taxes Ordinance**

This Part amends the Taxes Ordinance from 1 January 2011.

### **4. Section 2 amended – Interpretation**

(1) This section amends section 2.

(2) Subsection (1) is amended by —

(a) inserting the following definition after the definition of “know-how” —

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

(b) omitting the definition of “maintenance payments”; and

(c) inserting the following definition after the definition of “period of account” —

“permitted guests” means, in relation to a person —

(a) either —

(i) that person’s spouse or unmarried partner; or

(ii) one guest invited as the equivalent of a spouse or partner; and

(b) members of that person’s family or household;”.

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

“(3A) For the purposes of this Ordinance, a director of a company is to be treated as being an employee of that company.”

(4) Subsection (9) is repealed and the following subsection substituted —

“(9) For the purposes of this Ordinance —

(a) letting a building in the Falkland Islands (or part of it) for residential use is to be treated as carrying on a business in the Falkland Islands; and

(b) letting a building outside the Falkland Islands (or part of it) for residential use is to be treated as carrying on a business in the place where the building is situated.”

(5) Subsection (10) is repealed.

#### **5. Section 8 amended – The charge to income tax**

Section 8(1)(e) is amended by inserting “distributions,” after “dividends;”.

#### **6. Section 11 amended – Time for payment of income tax and interest on overdue tax**

Section 11(1)(b) is amended by omitting “the 1<sup>st</sup> September” and substituting “1 October”.

#### **7. Section 15 substituted**

Section 15 is repealed and the following substituted —

#### **“15. Deduction of retirement pension contributions**

“(1) Subsection (2) applies to —

(a) compulsory contributions made under section 10 of the Retirement Pensions Ordinance (No. 20 of 1996); and

(b) voluntary contributions made under section 12 of the Retirement Pensions Ordinance.

(2) When calculating the income of an individual for the purposes of income tax, the individual may deduct contributions to which this subsection applies but only if they are made by the individual on the individual's own behalf."

## **8. New section 15A**

The following section is inserted after section 15 —

### **"15A. Deduction of certain annual subscriptions**

(1) Subsection (2) applies when —

(a) an individual pays an annual subscription to a body of persons approved by the Commissioner under subsection (3); and

(b) the activities of the body are relevant to the performance by the individual of the duties of an office or employment.

(2) If this subsection applies, the individual may deduct the subscription from the emoluments of the office or employment.

(3) The Commissioner may approve a body of persons if —

(a) the activities of the body are carried on otherwise than for profit; and

(b) those activities are solely or mainly directed to either or both of the following objects —

(i) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions); and

(ii) the maintenance or improvement of standards of conduct and competence among the members of a profession.

(4) For the purposes of subsection (1)(b), the activities of a body are relevant to the performance of the duties of an office or employment if —

(a) the performance of those duties is directly affected by the knowledge advanced or spread by the body; or

(b) the duties involve the exercise of the profession with which the body is concerned."

## **9. Section 49 amended – Tax credits for certain recipients of qualifying distributions**

(1) This section amends section 49.

(2) Subsection (4) is repealed and the following subsection substituted —

“(4) Subsection (4A) applies to a person entitled to a tax credit in respect of a distribution but it does not apply to companies resident in the Falkland Islands.”

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

“(4A) A person to whom this subsection applies may claim to have the credit set against the tax chargeable on that person’s income for the year of assessment in which the distribution is made.”

## **10. Section 57 amended – Exemptions**

Section 57(1) is amended by —

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

“(l) interest receivable in respect of each of the following —

- (i) funds deposited in an interest-bearing account maintained at a bank or branch of a bank in the Falkland Islands;
- (ii) funds deposited with a registered co-operative society;
- (iii) funds held in the Falkland Landholdings Corporation Provident Fund; and
- (iv) funds held in the Falkland Islands Company Ltd Provident Fund;”

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

“(q) 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;” and

(c) adding the following paragraphs —

“(r) the income of individuals who are present in the Falkland Islands for less than 30 days in a 12 month period; and

(s) income from employment on board a fishing vessel of members of the crew of that vessel who are not resident in the Falkland Islands.”

## **11. New section 57ZA**

The following section is inserted after section 57 —

**“57ZA. Entertainment received by employees and permitted guests**

(1) This section applies to entertainment received from a person’s employer by —

- (a) that person; and
- (b) that person’s permitted guests.

(2) If, in a year, the total cost to the employer of the entertainment is £100 or less, no tax is payable in respect of the entertainment.

(3) If, in a year, the total cost to the employer of the entertainment is more than £100, no tax is payable on the first £100 of that cost but the employee is liable to income tax on the amount by which the cost exceeds £100.

(4) For the purposes of this section, the cost of entertainment includes the cost of transport or accommodation incidentally provided in the course of providing that entertainment.”

**12. Section 57A amended – Donations to charities**

(1) This section amends section 57A.

(2) Subsection (2) is amended by omitting paragraph (a) and substituting the following —

“(a) “a charitable donation” means a donation to a registered charity that is —

- (i) a donation in money; or
- (ii) a donation in kind from a business.”

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

“(2A) The amount to be deducted for a donation in kind made by a business is —

- (a) the cost to the business of the donation; or
- (b) if it is lower, the value to the charity of what is donated.”

**13. Section 65 amended – Meaning of “relevant earnings”**

Section 65(4) is repealed.

**14. Section 68 amended – Members’ contributions, and payments under schemes**

Section 68(2) is amended by omitting paragraph (a) and substituting the following paragraph —

“(a) £15,000;”

**15. Section 81 amended – Requirements relating to contributions**

Section 81(2) is amended by omitting paragraph (a) and substituting the following paragraph —

“(a) £15,000;”

## **16. Section 97 substituted**

Section 97 is repealed and the following substituted —

### **“97. Allowable deductions: general principle**

(1) Subsection (3) sets out the general principle according to which the income of a business is to be calculated for a relevant accounting period.

(2) The rest of this Chapter sets out rules that apply in specific situations.

(3) The general principle is that that outgoings and expenses may be deducted from the income of the business if (but only if) —

- (a) they were incurred during the relevant accounting period;
- (b) they were incurred wholly and exclusively for the purposes of the business; and
- (c) they are not of a capital nature.”

## **17. New sections 97A to 97D**

The following sections are inserted after section 97 —

### **“97A. Allowable deductions: specific examples**

The following are specific examples of outgoings and expenses that may be deducted when calculating the income of a business for a relevant accounting period —

- (a) interest paid on money borrowed for the purposes of the business, but only to the extent that the Commissioner is satisfied that the interest was payable on capital used to acquire the income of the business;
- (b) the cost (written off over the period of the loan) of incidental expenses reasonably incurred in relation to loan finance wholly and exclusively used for the purposes of the business;
- (c) rent paid for land or buildings occupied for the purposes of the business;
- (d) expenditure on —
  - (i) repairing premises, plant and machinery used in the business; or
  - (ii) renewing, repairing or altering tools and equipment used in the business;

- (e) expenditure reasonably incurred to advertise or promote the business (other than on gifts or entertainment);
- (f) bad and doubtful debts incurred in a business, but only if the conditions in section 97B are satisfied; and
- (g) other deductions prescribed in rules made under section 97D.

**97B. Bad and doubtful debts**

(1) This section sets out the three conditions that must be satisfied for a bad or doubtful debt to be deducted under section 97A(1)(f).

(2) The first condition is that the debt must have been due and payable before the start of the relevant accounting period for which the deduction is made.

(3) The second condition is that either —

(a) the Commissioner must be satisfied that the debt became bad during the relevant accounting period; or

(b) in the case of doubtful debts, the Commissioner must be satisfied about the extent to which it is estimated that they became bad during that period.

(4) The third condition is that the Commissioner must be satisfied that all reasonable steps have been taken to recover the debt.

**97C. Recovery of bad or doubtful debts**

(1) Subsection (2) applies to sums that are recovered on account of amounts previously written off or allowed in respect of bad or doubtful debts.

(2) Sums to which this subsection applies are to be treated for the purposes of this Ordinance as receipts of the business for the period in which they are recovered.

**97D. Power to make rules about allowable deductions**

The Governor may make rules providing for either or both of the following matters —

(a) prescribing deductions that may be made under section 97A(1)(g); and

(b) the method of calculating or estimating deductions allowed under section 97A or 97B.”

**18. Section 99 substituted**

Section 99 is repealed and the following section substituted —

**“99. Entertaining employees and permitted guests**

(1) When calculating the income or profits of a business, expenditure on entertainment may only be deducted in accordance with the rest of this section.

(2) Subsections (3) and (4) apply to persons carrying on business who are also employers.

(3) A person to whom this section applies may deduct, up to the limit in subsection (4), the cost of entertaining —

(a) one or more of that person's employees; and

(b) an employee's permitted guests.

(4) The maximum amount that can be deducted in a single year for each group consisting of an employee and that employee's permitted guests is £100.

(5) For the purposes of subsection (3) and (4), the cost of entertainment includes the cost of transport or accommodation incidentally provided in the course of providing that entertainment."

## **19. New sections 99A and 99B**

The following sections are inserted after section 99 —

### **“99A. No other deductions for gifts or entertainment**

The following expenditure is wholly disallowed for the purposes of ascertaining the profits of a business —

(a) expenditure on gifts, other than expenditure that is deductible under section 57A (which allows deductions for charitable donations); and

(b) expenditure on entertainment, other than expenditure that is deductible under section 99 (which allows limited deductions for expenditure on entertainment for employees and their permitted guests).

### **“99B. Wear and tear deduction for residential letting outside the Falkland Islands**

(1) This section applies to a business if it consists of letting a building outside the Falkland Islands (or part of one) for residential use.

(2) A deduction of 10% of the gross income of the business may be claimed in respect of wear and tear to the building and its contents and furnishings.

(3) No other deduction may be claimed for repairs to the building or for the provision, renewal or replacement of its contents or furnishings."

## **20. Section 116 amended – Initial allowances and writing-down allowances for capital expenditure**

(1) This section amends section 116.

(2) Subsection (2) is amended by omitting “110” and substituting “107”.

(3) Subsection (9) is repealed and the following substituted —

“(9) Unless subsection (10) applies, the writing-down allowance for a building is 10% of the expenditure incurred in acquiring the building.”

(4) The following subsection is inserted after subsection (9) —

“(9A) An allowance may not be claimed under subsection (9) for a building outside the Falkland Islands which is let for residential use.”

## **21. Section 183 amended – Postponement of tax on objection and appeal**

Section 183(8)(a)(iii) is amended by omitting “1<sup>st</sup> September” and substituting “1 October”.

## **22. Section 195 amended – Special provisions relating to non-residents**

(1) This section amends section 195.

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

“(2) Subsections (2A) and (2B) apply to a non-resident person who —

(a) is either —

(i) ordinarily resident in the Falkland Islands; or

(ii) present in the Falkland Islands for part of the year immediately preceding a year of assessment; and

(b) does not make a claim under subsection (3).”

(3) The following subsections are inserted after subsection (2) —

“(2A) When the chargeable income of a non-resident person to whom this subsection applies is calculated for the year of assessment, the non-resident person may deduct —

(a) compulsory contributions made under section 10 of the Retirement Pensions Ordinance; and

(b) the personal allowance under section 16(1).

(2B) A non-resident person to whom this subsection applies is not entitled to the following —

- (a) deductions under section 15 for voluntary contributions made under section 12 of the Retirement Pensions Ordinance;
- (b) deductions under section 15A for annual subscriptions;
- (c) relief under section 67 for contributions to an approved retirement benefit schemes or the Falkland Islands Pensions Scheme; or
- (d) relief under section 68 for contributions under approved personal pension arrangements.”

**23. Section 200 amended – Residence of individuals**

Section 200(2) is repealed and the following substituted —

“(2) In this Ordinance, a reference to an individual who is resident in the Falkland Islands in a year immediately preceding a year of assessment is a reference to a person who is actually in the Falkland Islands for 183 days or more in that preceding year.”

**24. Section 206 amended – Earned income and unearned income**

(1) This section amends section 206.

(2) Subsection (7) is repealed and the following substituted —

“(7) An allowance payable under Part 2 or Part 3 of the Members’ Remuneration Ordinance (No. 13 of 2009) is to be treated as earned income of the recipient.”

(3) Subsection (8) is repealed.

**PART 3  
AMENDMENT OF THE TAXES ORDINANCE BETWEEN 1 MARCH 2006 AND 31  
DECEMBER 2010**

**25. Section 3 of the Taxes (Amendment) Ordinance 2006**

Section 3 of the Taxes (Amendment) Ordinance 2006 (No. 6 of 2006) is deemed never to have come into force.

**26. Section 15 of the Taxes Ordinance amended**

(1) Section 15 of the Taxes Ordinance is deemed to have been amended by this section from 1 March 2006 until its substitution under section 7.

(2) In subsection (3), paragraph (d) is omitted and the following substituted —

“(d) contributions under the Retirement Pensions Ordinance (No. 20 of 1996) which are —

- (i) made by the individual on the individual’s own behalf; and

(ii) deductible under section 16 of the Retirement Pensions Ordinance.”

**PART 4**  
**AMENDMENT OF THE RETIREMENT PENSIONS ORDINANCE**

**27. Section 16 of the Retirement Pensions Ordinance repealed**

Section 16 of the Retirement Pensions Ordinance (No. 20 of 1996) is repealed.

**PART 5**  
**AMENDMENT OF THE MEDICAL SERVICES TAX ORDINANCE**

**28. Section 28 of the Medical Services Tax Ordinance amended – End of year returns by employers**

Section 28(3) of the Medical Services Tax Ordinance (No. ?? of 2010) is repealed and the following substituted —

“(3) If the Commissioner gives notice to a person under subsection (2), the person must comply with the notice within the period specified by the Commissioner in it.”

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**OBJECTS AND REASONS**

This Bill would make a number of minor amendments to the Taxes Ordinance (Title 69.1) and two connected amendments: one to the Retirement Pensions Ordinance (No. 20 of 1996) and the other to the Medical Services Tax Ordinance (No. ?? of 2010).

Most of the amendments reflect existing practice (including Extra Statutory Concessions 1, 2, 8 and 11, which will be withdrawn in due course).

All but Part 3 would be back-dated to 1 January 2011. However, this Bill is being published in the *Gazette* before that date and the proposals it contains were announced on 26 November 2010.

Part 3 of the Bill would be back-dated to 1 March 2006. This is to correct an error in an amendment made to the Taxes Ordinance by the Taxes (Amendment) Ordinance 2006 (No. 6 of 2006), which came into force on that date.

***Part 2 of the Bill would amend the Taxes Ordinance from 1 January 2010.***

*Clause 4* would amend the interpretation provisions in section 2. The following changes are substantive:

- (a) directors will now be treated for all purposes under the Taxes Ordinance (and subsidiary legislation made under it) as employees of the company; and
- (b) letting a building outside the Falkland Islands will now be treated as a business.

*Clause 5* would amend section 8 to include all distributions (and not just dividends) in the definition of income chargeable to tax.

*Clause 6* would amend section 11 to delay by a month (from 1 September to 1 October) the date in each year by which tax must normally be paid.

*Clauses 7 and 8* would replace the existing section 15 (much of which was repealed when earned income relief was abolished) with a substituted section 15 and a new section 15A. The substituted section 15 (to be inserted by *clause 7*) would deal with deductions for Retirement Pension Contributions. The new section 15A (to be inserted by *clause 8*) would deal with deductions for certain annual subscriptions. *Part 3* would amend the existing section 15 from 1 March 2006 until *clauses 7 and 8* come into effect on 1 January 2011.

*Clause 9* would amend section 49 to prevent individuals claiming refunds of resident in the Falkland Islands from claiming repayments when they have tax credits on distributions for more than the total amount of income tax they have to pay. The current position still reflects the former system of Advance Corporation Tax.

*Clause 10* would amend section 57 to incorporate three Extra Statutory Concessions into the Taxes Ordinance:

- (a) ESC 1 (which deals with individuals who are present in the Falkland Islands for less than 30 days in a 12 month period);
- (b) ESC 2 (which deals with fishing crews); and
- (c) ESC 11 (which deals with the Falkland Islands Company and Falkland Landholdings Corporation Provident Funds).

*Clause 10* would also extend the existing exemption for bounties payable to members of the Falkland Islands Defence Force to those payable to reserve police officers and retained firefighters.

*Clause 11* would insert a new section 57ZA to incorporate Extra Statutory Concession 8 (as it relates to employees and their permitted guests, which would be defined in section 2) into the Taxes Ordinance.

*Clause 12* would amend section 57A to allow businesses to make deductions for donations made to charity in kind rather than in money.

*Clause 13* would amend section 65 to remove a provision that became obsolete when independent taxation of husbands and wives was introduced.

*Clauses 14 and 15* would amend sections 68 and 81 to increase (from £10,000 to £15,000) the limit on pension contributions for which relief from income tax can be claimed. This reflects existing practice.

*Clauses 16 and 17* would replace the existing section 97 with a substituted section 97 and new sections 97A to 97D. The provisions would be made clearer and there would be a substantive change to clarify that advertising and promotional expenses can be claimed but not most expenditure on gifts or entertainment.

*Clauses 18 and 19* would replace the existing section 99 with a substituted section 99 and a new section 99A and would also insert a new section 99B. The substituted section 99 would incorporate Extra Statutory Concession 8 (as it relates to employers) into the Taxes Ordinance and the new section 99A would disallow deductions for expenditure for other entertainment and gifts (other than charitable donations). The new section 99B would allow a flat-rate deduction for wear and tear from income from letting overseas property for residential use.

*Clause 20* would correct a cross-reference in section 116 to clarify that writing-down allowances cannot be claimed under section 116 or 117 if they have already been claimed under section 107 for expenditure on scientific research (or under section 112 for expenditure on petroleum exploration and appraisal, intangible drilling costs and plant and machinery used in ring-fence trades). It would also provide for balancing charges to be payable on residential property and exclude overseas property let for residential use from the writing-down allowance system.

*Clause 21* would make a consequential amendment to section 183 (which deals with postponement of tax pending an objection and/or appeal) to reflect the delay to the date in each year by which tax must normally be paid that would be made by *clause 6*.

*Clause 22* would amend section 195. The substantive change would be that individuals who are not resident in the Falkland Islands for tax purposes (because they were physically present in the Falkland Islands for fewer than 183 days in a year) could claim a deduction for compulsory Retirement Pension Contributions (but not for other pension contributions). It would remain the position that the personal allowance for a non-resident would be apportioned according to the length of time actually spent in the Islands under the Taxes (Apportionment of Deductions) Rules (Title 69.1.1).

*Clause 23* would amend section 200. The substantive change would be that individuals are no longer to be regarded as resident in the Falkland Islands in the years in which they arrive or depart (unless they are present for 183 days or more in those years). This reflects existing practice.

*Clause 24* would amend section 206 to replace one provision that has been superseded because of a change in the legislation dealing with the allowances and expenses paid to Members of the Legislative Assembly and to remove another that became obsolete when independent taxation was introduced for husbands and wives.

***Part 3 would retrospectively amend section 15 of the Taxes Ordinance between 1 March 2006 and 31 December 2010.***

Section 3 of the Taxes (Amendment) Ordinance 2006 amended section 15 of the Taxes Ordinance but, because of an incorrect cross-reference, repealed the whole of section 15(3)(d) (including wording in what was thought to be a separate paragraph) and purported to amend that wording.

*Clauses 25 and 26* would deal with that by means of a legal fiction that the amendment never came into force and replacing it with a back-dated amendment to achieve the result that was originally intended.

A completely new version of section 15 would be substituted by *clause 7* and that would apply from 1 January 2011.

***Part 4 would make a connected amendment to the Retirement Pensions Ordinance.***

*Clause 27* would repeal section 16 of the Retirement Pensions Ordinance, which makes separate provision for the deduction of Retirement Pension Contributions. These deductions would be dealt with in sections 15 and 195.

***Part 5 would make a connected amendment to the Medical Services Tax Ordinance.***

*Clause 28* would amend section 28 of the Medical Services Tax Ordinance (No. ?? of 2010) to bring the period within which employers can be required to make end of year returns for Medical Services Tax into line with that for returns to be made under the Taxes Ordinance.