

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Taxes (Amendment) (No 3) Bill 2011 and other outstanding proposals to amend tax legislation

Paper No: 280/11

Date: 14 December 2011

Report of: Attorney General/Commissioner for Taxation

1.0 Purpose

The main purpose of this paper is to submit, for Executive Council's approval, a draft Bill to implement previous decisions of Executive Council:

- (a) to revise the penalties for failure to submit tax returns, etc by the due date; and
- (b) to remove the exemption from income tax and Medical Services Tax for locally recruited civilian employees of the UK Government.

The other purpose of this paper is to propose a way forward in relation to other amendments to tax legislation that have been approved as a matter of policy but for which amending legislation has not yet been drafted.

2.0 Recommendations

Not approved for submission to Legislative assembly under Certificate of Urgency. To be gazetted and presented to Legislative Assembly in February 2012.

Executive Council is recommended —

- (a) to approve the attached draft Bill for presentation to the Legislative Assembly in December under a certificate of urgency; and
- (b) authorise an announcement of changes proposed to be included in one or more future Taxes (Amendment) Bills with backdated effect to 1 January 2012, so that taxpayers have adequate notice of the proposed changes.

3.0 Summary of Financial Implications

None

4.0 Background

Penalties for failure to submit returns, etc by the due date

4.1 At its meeting on 25 August 2011, Executive Council considered ExCo papers 173/11 approved a recommendation that the Taxes Ordinance should be amended:

- (a) to extend civil penalties under section 12(4) to include failures to submit tax returns by the due date (bringing the legislation into line with what it had been assumed it was); and
- (b) to changing the way in which penalties are calculated for returns, etc submitted 3 months late or more.

4.2 Although it was not specifically addressed in ExCo paper 173/11, it is proposed that the same penalties should apply to the other requirement in section 12: the requirement to notify the Commissioner of Taxation of new sources of chargeable income.

4.3 Although, again, it was not specifically addressed in ExCo paper 173/11, it is also now proposed that the Commissioner for Taxation should have a discretionary power to remit (ie to reduce or waive) civil penalties imposed on a person but only if the person applies for remission and can show that special circumstances apply and that remission is appropriate in those circumstances.

4.4 The power for the Commissioner for Taxation to remit civil penalties is considered an appropriate and necessary legal safeguard in the context of the overall scheme. A similar provision was included in amendments made by the Taxes (Amendment) (No.2) Ordinance earlier this year.

Exemption for locally recruited civilian employees of the UK Government

4.5 Also, at its meeting on 25 August 2011, Executive Council considered ExCo paper 196/11¹ and approved a recommendation that section 57 of the Taxes Ordinance should be amended to remove an exemption from tax for civilian employees of the MoD who do not meet the criteria set out in the Taxes and Duties (Special Exemptions) Ordinance.

4.6 As indicated in ExCo paper 196/11, similar considerations apply to those working for the UK Government in other capacities (primarily, FCO staff working at Government House). For that reason, it is proposed that the requirement to be accommodated on MoD land is not included.

4.7 Executive Council also approved a recommendation in ExCo paper 196/11 that the Medical Services Tax Ordinance should be amended in the same way as the Taxes Ordinance.

Other outstanding amendments to tax legislation

¹ Executive Council had originally looked at the issue when it considered ExCo paper 65/11.

4.8 Finally, at its meeting on 25 August 2011, Executive Council considered ExCo paper 197/11 and approved a recommendation that legislation should be brought forward to implement from 1 January 2012 a number of proposed amendments to the Taxes Ordinance and the Medical Services Tax Ordinance for which it had previously given policy approval.

4.9 A Taxes (Amendment) Bill had been included in the Legislative Programme (approved by Executive Council) for February 2012 but that would be after the start of the new tax year.

4.10 It has not been possible to include all of the proposed amendments in the draft Bill attached to this paper.

4.11 Whilst competing priorities have not yet allowed the drafting of the amendments to be scoped properly, it should be possible for a Bill dealing with at least some of the amending legislation to be submitted to Executive Council for approval in January 2012 for presentation to the Legislative Assembly in February 2012. Other amendments may have to be left over to a second Bill.

4.12 It would be possible for the legislation to be back-dated to have effect from 1 January 2012, so that it applies for the whole of the forthcoming tax year.

4.13 However, as a matter of good practice, taxpayers should be warned in advance about this, so that they have adequate notice of the change and can arrange their affairs accordingly.

5.0 Draft Bill

5.1 A draft Taxes (Amendment) (No.3) Bill has been prepared and it is annexed to this paper.

5.2 The Bill largely reflects decisions already taken on the basis of ExCo papers 173/11 and 196/11 and its provisions are explained in the Objects and Reasons that appear at the end of the Bill.

5.3 However, Executive Council's attention is specifically drawn to the following issues:

- the penalties for returns, etc would be extended to cover failures to notify the Commissioner about new sources of chargeable income (see paragraph 4.2);
- the Commissioner for Taxation would be given a power to remit civil penalties (see paragraphs 4.3 and 4.4);
- there would be no requirement for UK Government civilian employees to be accommodated on MoD land to qualify for the exemption, provided they were not locally recruited (see paragraph 4.6); and

- the exemption provisions are based on the provisions of the Special Exemptions legislation and make no change to deal with an issue identified about prospective employees who come on a familiarisation visit or a business trip before accepting a job or posting with a defence contractor or the UK Government – that has been left for consideration during the overall review of the exemption for defence contractors' employees.

6.0 Certificate of Urgency

6.1 It is proposed that the Taxes (Amendment) (No.3) Bill should be considered at the December meeting of the Legislative Assembly under a certificate of urgency.

6.2 The basis of the urgency would be that the changes need to be made before the end of the tax year.

6.3 There is a argument that this would be a mis-use of the certificate of urgency procedure on the basis that the amendments made in the attached draft Bill could be dealt with at the February meeting of the Legislative Assembly and back-dated to 1 January 2012 (in the same way as being suggested for other amendments) and also on the urgency has not arisen because of an unforeseen event.

6.4 There is a counter-argument that, since the amendments have already been drafted, they should be brought forward now, reducing the need to rely on back-dating legislation.

6.5 Essentially, there is a balance to be struck between these arguments and it is suggested that bringing forward these amendments now (and bringing forward the others as soon as possible) strikes the right balance.

7.0 Financial Implications

The draft Bill has no new financial implications, as the financial implications of the proposals were already dealt with in ExCo papers 173/11 and 196/11.

8.0 Legal Implications

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

9.0 Human Resources Implications

None

Taxes (Amendment) (No. 3) Bill

PART 1 INTRODUCTION

1. Title

This Ordinance is the Taxes (Amendment) (No 3) Ordinance 2011.

2. Commencement

This Ordinance comes into force on 1 January 2012.

PART 2 AMENDMENT OF TAXES ORDINANCE

3. Amendment of Taxes Ordinance

This Part amends the Taxes Ordinance (Title 69.1).

4. Section 12 amended – Notice of chargeability and tax returns

Section 12(4) is repealed.

5. New section 12A

The following section is inserted after section 12 —

“12A. Notice of chargeability and tax returns: penalties

(1) A person who does not comply with a requirement of section 12 is liable to a penalty of £100.

(2) A person who has still not complied with a requirement of section 12 three months after the due date for compliance is liable to a further penalty of £200.

(3) A penalty under subsection (1) or subsection (2) —

(a) is incurred whether or not a prosecution is brought;

(b) attracts the provisions of Schedule 4 and any other provision of this Ordinance about penalties; and

(c) may be wholly or partially remitted by the Commissioner following an application by the person on whom it is imposed, but only if the Commissioner is satisfied that remission is appropriate in the special circumstances of the case.

(4) The payment of a penalty for which a person is liable under subsection (1) or (2) does not either —

(a) relieve the person of the obligation to comply with the requirement to which the penalty relates (if that has not yet been done); or

(b) preclude the bringing of a prosecution.”

6. Section 57 amended – Exemptions

(1) This section amends section 57.

(2) In subsection (1) —

(a) paragraph (e) is omitted and the following paragraph substituted —

“(e) emoluments paid out of United Kingdom Government funds to a person serving in the armed forces;” and

(b) The following paragraph is inserted after paragraph (e) —

“(ea) emoluments paid out of United Kingdom Government funds to a person serving the United Kingdom Government in a civil capacity who is not excluded from this exemption by subsection (2A);”.

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

“(2A) A person is excluded from the exemption in subsection (1)(ea) if one or more of the following apply —

(a) the person was present in the Falkland Islands when either —

(i) engaged to serve in the Falkland Islands; or

(ii) posted to serve there; and

(b) the person had been present in the Falkland Islands within the three months before then; or

(c) in the opinion of the Commissioner for Taxation, the main reason why the person was absent from the Falkland Islands was to qualify for exemption under subsection (1)(ea).

(2B) Subsection (2A) does not exclude a person from the exemption in subsection (1)(ea) if the person is present in the Falkland Islands in the course of service covered by that exemption when the person is either —

(a) re-engaged to continue serving in the Falkland Islands; or

(b) posted for a serve there for a further period.”

PART 3

AMENDMENT OF MEDICAL SERVICES TAX ORDINANCE

7. Section 21 of the Medical Services Tax Ordinance amended – Exemptions

(1) This section amends section 21 of the Medical Services Tax Ordinance (No 13 of 2010).

(2) In subsection (1) —

(a) paragraph (c) is omitted and the following paragraph substituted —

“(e) earnings and benefits in kind paid out of United Kingdom Government funds to a person serving in the armed forces;”; and

(b) The following paragraph is inserted after paragraph (c) —

“(ca) earnings and benefits in kind paid out of United Kingdom Government funds to a person serving the United Kingdom Government in a civil capacity who is not excluded from this exemption by subsection (1A);”.

(3) The following subsections are inserted after subsection (1A) —

“(1A) A person is excluded from the exemption in subsection (1)(ca) if one or more of the following apply —

(a) the person was present in the Falkland Islands when either —

(i) engaged to serve in the Falkland Islands; or

(ii) posted to serve there; and

(b) the person had been present in the Falkland Islands within the three months before then; or

(c) in the opinion of the Commissioner for Taxation, the main reason why the person was absent from the Falkland Islands was to qualify for exemption under subsection (1)(ca).

(1B) Subsection (1A) does not exclude a person from the exemption in subsection (1)(ca) if the person is present in the Falkland Islands in the course of service covered by that exemption when the person is either —

(a) re-engaged to continue serving in the Falkland Islands; or

(b) posted for a serve there for a further period.”

OBJECTS AND REASONS

This Bill would make two changes to the Taxes Ordinance (Title 69.1) and a change to the Medical Services Tax Ordinance (No 13 of 2010).

It would come into force on 1 January 2012 (the start of the new tax year).

Clauses 4 and 5 would replace the existing civil penalty provision in section 12(4) with a new section 12A.

Section 12(4) currently provides for a civil penalty of £100 to be imposed if a taxpayer does not supply accounts or other information under section 12(2).

Clause 5 would extend that to other failures to comply with section 12 (failure to submit a tax return by the due date or to notify the Commissioner of Taxation in time about new sources of chargeable income). It would also provide for a further penalty of £200 to be imposed if the requirement has still not been complied with three months after the due date. This would be in addition to the initial penalty of £100 rather than instead of it, as at present.

Clause 6 would replace section 57(1)(e) (which deals with exemption for emoluments for those serving in the armed forces and working for the UK Government) with two new paragraphs: (e) and (ea). The effect of this would be to tighten the existing exemption, so that it would no longer apply to those who have been recruited locally to work for the UK Government.

Clause 7 would make a corresponding change to the Medical Services Tax Ordinance.