

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Authorisation from the Governor to disclose information under S202 Taxes Ordinance 1997 (as amended)

Paper No: 30/09

Date: 26th February 2009

Report of: Company Taxation Officer

1.0 Purpose

1.1 To seek authorisation from the Governor to communicate information obtained by the Tax Office to other government departments and Authorities where there is the possible infringement of the law.

2.0 Recommendation

2.1 That ExCo recommend the proposal authorising the Taxation Officer to provide information obtained during the course of official work to be disclosed to the relevant authority where there is the potential infringement of the law.

3.0 Summary of Financial Implications

3.1 None

4.0 Background

4.1 S 202 of the Taxes Ordinance 1997 deals with official secrecy. It prevents any person employed in the administration of the Ordinance from divulging any information to any other person. S202 (2) states that any person communicating such information which is not for the purpose of the Ordinance and is outside the authority of the Governor commits an offence.

4.2 This provision is necessary to keep private the tax affairs of all persons dealt with by the tax office. However, it also prevents the Taxation Officer from alerting other authorities where there is abuse of their legislation.

4.3 In the UK there is a 'Gateway' procedure which allows HMRC to pass information obtained from legitimate taxation enquiries to other public bodies such as the police and local authorities. In the Falkland Islands there is no such provision. Hence if the Tax Office making legitimate enquiries into a tax matter

discover that a different law has been broken they are not at liberty to disclose this and the person may well not face enquiry from the relevant authority.

4.4 For the reason of good governance the Tax Office wish to be able to pass on information to the relevant public body – police, customs, immigration being the most likely – where it appears to the Taxation Officer that this is required for the purposes of the prevention or detection of crime. The investigation of the possible offence would then rest with the proper authority.

4.5 The proposal is that the Governor issues a general authorisation for the Taxation Officer and her deputy, only, to make such disclosures and the procedure will be that advice in all cases is first sought from the Attorney General’s chambers.

5.0 Financial Implications

5.5 There are no financial implications

6.0 Legal Implications

6.1 Under the Ordinance only the Governor may provide this authority. The Attorney General supports the proposal in this paper which protects the public interest by allowing disclosure in these circumstances, but subject to the important safeguard that the AG’s Chambers will be consulted on each occasion when disclosure is proposed

7.0 Human Resources Implications

7.1 There may be additional work for the AG’s chambers reviewing potential disclosure cases. In addition other departments receiving the disclosures will no doubt use resources to carry out their own investigation.