

STATES OF JERSEY



TAXATION OF RENTAL SUBSIDIES FOR ESSENTIALLY EMPLOYED PUBLIC EMPLOYEES

**Presented to the States on 18th March 2003
by the Policy and Resources Committee**

STATES GREFFE

REPORT

Rental subsidies – history

A review of policy in connection with “(j)” category consents was carried out by the Housing Committee in 1988. As a consequence of that review, a number of issues relating to the support that should be provided to essential employees were considered by the Finance and Economics Committee. One of these issues related to the level of rent that employees who were granted a “(j)” category licence to lease a property would be obliged to pay. It was apparent, both at that time and subsequently, that the local housing market in “(j)” category properties was significantly more expensive than equivalent properties in the United Kingdom and properties in the “(a)” – “(h)” property market which essential employees were not entitled to lease or purchase. In order to recruit such essential employees it was considered vital to limit the amount of rent that they would have to pay. Therefore, it was decided to provide financial support by way of a rental subsidy to these employees in order to ensure that the Island could secure their employment.

In the main, the employees who have received some form of rental subsidy since 1988 are employed in the Education and Health Departments. This is because these departments are obliged to recruit significant numbers of professionally qualified people to those areas where such skills are in short supply locally (e.g. teachers, doctors, etc.). However, there are also a relatively small number of civil servants, such as Probation Officers and other specially qualified people, who are recruited to some of the smaller States’ departments.

The level of subsidy was calculated on a reducing scale which meant that the level of subsidy was smaller where the grade of the office, and therefore their remuneration, was higher. The subsidy was not a constant amount, as it was adjusted on an annual basis according to the amount of taxable income that was earned by the employee and his/her partner. It should also be borne in mind that a number of employees were not entitled to a rental subsidy because their taxable income exceeded a specified level at which the subsidy was no longer paid.

Tax information in respect of subsidies

There is no evidence to indicate that consideration was given, at the time that the subsidies were first paid, to whether such payments gave rise to a tax liability. Subsequently, it appears that no further consideration was given to this matter until quite recently. If the employer, the States, had been aware of the fact that rental subsidies paid to employees gave rise to a tax liability, it is quite possible that payments of subsidy might well have been enhanced in order to take this into account when the payments were first instituted.

A pack of information about various matters relating to the Island was provided to all those new employees who were recruited from outside of Jersey. Whilst this pack included advice on income tax matters such as the level of taxation in the Island and the need to contact the Income Tax Department to register with them, it did not provide any information on how tax liability arose on the various elements of remuneration that were paid by the employer.

Some essential employees who have been caught up in this matter have identified that their decision to come to Jersey was marginal and that, if they had been made aware of the tax liability that would arise in connection with their rental subsidy, then it could well be that they would not have accepted the post.

Payment of rental subsidies

There was no clear central directive as to how such rental subsidies should be administered and, in order to pay the subsidy, different States’ departments adopted different approaches.

- For example, some employees were paid their subsidy through Payroll. As a consequence, these amounts were declared to the Income Tax Department and it is in these cases that tax on the subsidy has been paid.
- Other employees were paid direct by their Finance Department rather than through Payroll. As a result, information in connection with the subsidy would not have been included on the employees’ pay slips;

neither would information about the subsidy have been passed on to the Income Tax Department by the employer.

- Other departments paid the total rent to the landlord and then reclaimed the employees' contribution from them by deducting the appropriate amount from their monthly salary. In addition, other charges such as service charges, water and parish rates, etc., were also deducted from the employees' salaries. Again, this meant that the level of subsidy was not declared by the employer to the Income Tax Department.
- On occasion, departments chose to enter into lease arrangements direct with the landlord. In these circumstances the Income Tax Department has confirmed that the employee is not liable for tax in connection with the subsidy that was provided by the employer. However, where departments have required their employees to take leases out in their own names and the employees have received a subsidy then this arrangement gives rise to a tax liability on the part of the employees. (In this connection, it should be noted that States' policy in recent years has required that employees take out leases in their own name, rather than the employer, which has unwittingly given rise to the tax liability. It is understood that the approach in the private sector is generally the reverse.)

In the light of the above information, it is apparent that there could be uncertainty and confusion in the minds of employees that they were receiving a financial benefit and that this was declarable for tax purposes. Such a view has subsequently been confirmed in discussing these matters directly with the affected employees.

Importantly, it can be argued that those employees who were obliged to take out leases in their own name were treated unfairly compared to those employees whose employing department took out the lease in the name of the appropriate States Committee. If States' departments had taken the latter approach in every instance, no tax liability would have arisen. It was, therefore, as a direct consequence of the actions of the States, as an employer, which has led to employees retrospectively becoming liable to pay tax on their rental subsidy.

Tax liability in respect of subsidies

However, notwithstanding the innocence of the individual employees in this matter, it is apparent that the Comptroller of Income Tax has a strict legal responsibility to raise a tax assessment in connection with the amounts of subsidy that have been provided. In exercising his powers, the only discretion that he can apply is by limiting the collection of tax arrears to 5 years where he considers that there was a genuine and innocent error on the part of the individual concerned. The Comptroller has confirmed that he will be exercising his discretion in this manner in these particular circumstances.

The Comptroller of Income Tax is, however, unable to enforce the payment of tax arrears in respect of those who have left the Island by use of legal action through the court systems of the countries in which the ex-employees reside. Thus, those employees who have failed to pay their tax on their rental subsidy and have subsequently returned to the United Kingdom or elsewhere will, almost certainly, escape paying their tax. The Income Tax Department will only be able to enforce payment in respect of those employees who are still present in Jersey at this moment in time. As a result, there is yet further inequity attaching to the small group of employees who are currently resident in the Island and who would be obliged to pay back taxes.

Decision in respect of payment of tax liability

Consequently, the Policy and Resources Committee, the Finance and Economics Committee and the main employing Committees, Education, Sport and Culture and Health and Social Services, were confronted with a small but significant group of employees who were distressed at having to meet an entirely unexpected and unplanned tax liability for a period of up to 5 years in circumstances in which they were genuinely unaware of their responsibilities. Not only did such circumstances lead to serious de-motivation, but there were also potential threats that some of the employees would terminate their contracts with the States. Such losses would undoubtedly have led to problems in providing front-line services to the community and would have brought about additional recruitment expenses associated with replacing such people. In these circumstances and in accordance with precedent that had been set in the private sector, it was considered appropriate for the employer to meet the tax liability of these employees. A further factor that influenced the Committee's decision was that it

had been the direct action of the employer in requiring employees to take out leases in their own names that had given rise to the tax liability in the first place.

Having decided to meet the tax liability of those who had not paid tax in respect of their rental subsidy, the Committee felt that it would be inequitable to leave the very small number of employees who had paid their tax in a worse financial position than their colleagues.

The Finance and Economics Committee agreed that the sums in question could be met from out of the General Reserve.

The number of employees affected by this issue and the amount of arrears of tax are not, as yet, finally known. Individual departments are currently collating this information for the period of the last 5 years in order to submit it to the Income Tax Department. From the information that has already been received, a total of 148 employees have been identified as affected in some way and the “best” estimate of the amount of tax that is involved is that it will be in the region of £150,000. In this connection, it will be readily appreciated that the amount of tax that will be paid by the States of Jersey to the Income Tax Department will subsequently be returned to the Treasury. It is only in the comparatively small number of cases (at the time of preparing this Report only 13 cases have been identified) where employees have paid their tax on rental subsidy that funds will be paid to the employee. However, in the vast majority of cases, the loss to the States is the money foregone on that amount of tax that would have been collected from those employees who had received a subsidy but had not declared it for tax purposes.

Future administration of rental subsidies

A major review of the rental subsidy scheme was carried out by the States Human Resources Department during 2002 and it was towards the end of that review that it emerged that rental subsidies were subject to tax.

In considering the practices and procedures applied by different departments across the States, it was apparent that there was a lack of consistency in calculating and paying rental subsidies. As a result, a number of recommendations concerning the manner in which the subsidies are calculated and administered in future have been made. These include the recommendation that all subsidies should now be paid through the States’ corporate payroll system. (It should be noted that these recommendations also received the support of States Internal Audit.) It is considered that, in this way, a consistent and accurate approach to the calculation and payment of subsidy will be achieved in future. In addition, the pack of information that is supplied to future “(j)” category employees has now been adjusted to make specific the tax position of these employees vis-à-vis rental subsidies. Further, all existing employees who are in receipt of a rental subsidy have been advised of their responsibility for declaring their subsidy for tax purposes in future.

Finally, in the light of the possibility that the package offered to essential employees may no longer be sufficiently attractive to recruit people of the appropriate experience and skills, the States Human Resources Department will, once again, give consideration to the levels of subsidy that are provided to such employees. Evidence suggests that recruitment of many of the people included in these groups is becoming increasingly competitive and Jersey no longer holds significant advantage over other employers of the professions in question. It is, therefore, vital that the terms of service that are offered to these employees remain attractive.

Legitimate expectation

One further consideration that the President of the Policy and Resources Committee referred to in his statement to the House on 4th February was that now that the decision of the Committees has been made public, the affected employees have been given to understand that their liabilities will be met. In this connection, it is a settled principle of law that there is a requirement for consistency and fairness in relations between the individual and the state, and once the employees have been given a legitimate expectation that their liabilities will be met, they may in this way acquire a legally enforceable claim.

Conclusions

The President of the Policy and Resources Committee made clear in his statement to the House on 4th February that he recognised that the situation that has occurred is unsatisfactory.

In determining the way forward, the Committees involved had to weigh up the advantages and disadvantages of making a small group of employees who are providing a vital service to the local community either pay their arrears of tax or to support them in a similar manner to that adopted by some private sector companies. In the event, the Committee decided that, because of the following reasons, it was appropriate to support the “(j)” category employees –

- There was genuine confusion and uncertainty about liability to pay taxation in respect of rental subsidies.
- The employer had not provided advice to its employees about payment of taxation in respect of rental subsidy.
- The different methods adopted by the employer to pay the subsidy meant that the tax authorities were not provided with information in respect of the level of rental subsidy that had been paid to particular employees.
- The specific policy of the employer with regard to making employees the leaseholders had created this tax burden in the first instance.
- The demoralisation and de-motivation of this important group of employees could impact adversely upon the delivery of services.
- These employees are a vital group for the delivery of services to the local community and their loss could place the delivery of services in jeopardy, as well as creating additional expense in recruiting replacements.
- The impact upon employees was going to be inequitable because those who were still resident in the Island would be required to pay their back tax, whilst those who had left would escape their liability.

In these circumstances, the Policy and Resources Committee concluded that it was important to retain the motivation and commitment of the employees concerned and it, therefore, decided that it would pay the tax liability that has arisen over the last 5 years.

STATES OF JERSEY



TAXATION OF RENTAL SUBSIDIES FOR ESSENTIALLY EMPLOYED PUBLIC EMPLOYEES (R.C.12/2003): ADDENDUM

**Presented to the States on 10th June 2003
by the Policy and Resources Committee**

STATES GREFFE

ADDENDUM

The Policy and Resources Committee presented to the States on 18th March 2003 information concerning the various issues surrounding rental subsidies that had been paid to certain public sector employees (R.C.12/2003). That Report also included an estimate of the potential number of employees that were affected and the amount of taxation that was payable in respect of the rental subsidy that these employees had received during the period 1997 - 2001. At that time it had not proved possible to confirm these figures as it was necessary to track through individual employees' records over the five year period in question in order to establish the full extent of the amounts that were involved.

Just recently the appropriate information has been notified to the Policy and Resources Committee by the Comptroller of Income Tax and this is now set out below for the information of States' members.

In the period in question, 1997 – 2001, 111 States' employees were identified as having been paid a rental subsidy. The division of these employees between departments is as follows:-

Education	78
Health and Social Services	23
States Treasury	3
Probation	3
Agriculture and Fisheries	2
Planning and Environment	1
Policy and Resources	1
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	111

Of that number, 99 did not declare their subsidy to the Tax authorities, whereas 12 did.

The total amount of rental subsidy received by the 99 who had not declared this for taxation purposes was £602,398, which means that the tax that should be paid by way of a global assessment on the employer to the Comptroller of Income Tax in respect of these employees is £120,480.

The 12 employees who had declared their subsidy to the Income Tax Department received rental subsidies amounting to £53,072 and the tax they paid was £10,715. However, because these employees will be subject to further taxation in respect of any sum that is paid to them by their employer, a total of £13,395 would be required to recompense them fully for the amount of tax (£10,715) that they had paid. (It will be appreciated that the additional sum of £2,680 would subsequently be paid to the Comptroller of Income Tax by the employees in question.)