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Franc McLaughlin

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Our refs: IRU/9/384

Email/18971/2009

27th May 2009

Dear Mr. McLaughlin,

FREEDOM OF INFORMATION ACT REQUEST:
MEMORANDUM OF UNDERSTANDING ON ROYAL FINANCES

Thank you for your enquiry dated 26th April 2009 asking for information under the Freedom of Information (Fol) Act 2000 (the Act), which we received on 27th April 2009.

With reference to a newspaper article¹, you asked for:

... all information submitted to ministers to support this measure, other than information exempt under section 37 of the Freedom of Information Act ...

We have interpreted this to be a request for information submitted to Treasury ministers that supported the Amendment to the Memorandum of Understanding on Royal Taxation that the Chancellor announced to the House of Commons on 22nd April 2009.

I can indicate that we hold some information that was provided to the Chancellor of the Exchequer recommending the decision to amend the 1993 Memorandum of Understanding on Royal Taxation.

This information falls within the scope of the exemption provided for under section 35(1)(a) of the Act – information relating to the “formulation or development of government policy”. This is a qualified exemption and requires us to consider both the public interest in release and in withholding, and to come to a balanced view.

Having considered the public interest arguments we have concluded that we should release this information to you. This is included in the attached annex.

A small amount of information falls within the scope of section 37(1)(a) of the Act – information relating to communications with Her Majesty, with other members of the Royal Family or with the Royal Household. You indicated in your request that you wished to see information other than information that was exempt under section 37 and we have therefore concluded that this information falls outside the scope of your request.

¹ <http://www.telegraph.co.uk/finance/financetopics/budget/5202655/Royal-Family-are-winners-from-the-Budget.html>



For your information, the Chancellor's statement to Parliament and the amendment to the Memorandum of Understanding that was deposited in Libraries of both Houses on 22nd April, can be found on the Parliament website.

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090422/wmstext/90422m0001.htm>

<http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-1188.pdf>

I bring to your attention that these documents have Parliamentary copyright and a legal statement regarding their copyright is attached.

If you have any queries about this letter, please contact us at the email account given in the header to this letter. It would help us, if you could remember to quote the IRU reference number (also in the header) in any future communications.

Yours sincerely,

Information Rights Unit
On behalf of HM Treasury

Parliamentary Copyright.

Parliamentary copyright is defined at Section 165 of the Copyright, Designs and Patents Act 1988 as covering works made by or under the direction or control of the House of Commons or the House of Lords. The rights in Parliamentary copyright are exercised by the Speaker of the House of Commons (for Commons material) and by the Clerk of the Parliaments (for Lords material). However, the administration of Parliamentary copyright material is undertaken by the Office of Public Sector Information under the terms of an agreement with Parliament. Day-to-day administration of Parliamentary copyright is dealt with by the Information Policy Division of the Office of Public Sector Information. <http://www.opsi.gov.uk/advice/parliamentary-copyright/index.htm>

Your right to complain under the Freedom of Information Act 2000

If you are not happy with this reply, you may request a review by writing to HM Treasury, Information Rights Unit, 2/S2, 1 Horse Guards Road, London SW1A 2HQ. Email foi.responses@hm-treasury.gov.uk. Any review request must be made within 2 months of the date of this letter.

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Treasury. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Annex

Background:

1. As Chancellor, you are a Royal Trustee, along with the Prime Minister and the Keeper of the Privy Purse (Alan Reid). The Memorandum of Understanding (MOU) was published in 1993 in the Royal Trustees' Report on Royal Taxation. It sets out the arrangements under which Her Majesty voluntarily pays income, capital gains and inheritance tax and HRH The Prince of Wales voluntarily pays income tax on his income from the Duchy of Cornwall (his other income being taxable already). The MOU was amended in 1996 to reflect the changes necessary when Self Assessment was introduced.

Proposed amendments

2. The suggested amendments are two-fold – one a matter of mechanics to do with Self Assessment and one of substance to do with expenditure met by HRH The Prince of Wales on official engagements carried out by Their Royal Highnesses The Princes William and Harry. [REDACTED]
[REDACTED]
[REDACTED] [Out of scope]
3. First, there is a change to the filing dates for Self Assessment – the deadline for sending in a return is to be moved forward to 31 October after the end of the year of assessment for people making their return on paper. The deadline for filing electronically remains at 31 January. The current MOU still suggests that statements of income on behalf of her Majesty and of HRH The Prince of Wales should be sent in by 30 September. It seems appropriate to take this opportunity of moving that date to 31 October, so as to maintain the line that, wherever possible, the same arrangements apply under the MOU as apply to taxpayers in general.

4. Second, the MOU does not explicitly provide for official expenditure incurred on engagements by Their Royal Highnesses The Princes William and Harry, and which is met by HRH The Prince of Wales from his Duchy of Cornwall income, to be deducted in arriving at the amount of Duchy income which is taxable. It is entirely in keeping with the principles set out in the MOU that such expenditure should be deductible in the same way and according to the same rules as expenditure incurred by The Prince himself or HRH the Duchess of Cornwall. But that is not what the MOU says at the moment.
5. It may help to set things in context to explain how tax applies to members of the Royal Family. They are taxable on their income in the ordinary way, including on Parliamentary annuities. The only exceptions are that HM The Queen is not subject to tax at all, but has agreed to pay tax voluntarily under the MOU. And The Prince of Wales is not subject to tax on his income from the Duchy of Cornwall which is also subject to Crown exemption. The Prince has undertaken in the MOU to pay tax on that income voluntarily. Since the MOU sets out the terms on which tax is to be paid voluntarily, it also sets out the deductions that can be made to arrive at the amounts to be taxed.
6. So far as official expenditure by members of the Royal Family is concerned, the basic principle is that expenditure incurred on official engagements carried out on behalf of The Queen is deductible from taxable income. Under the MOU, HM The Queen undertook to refund to the Consolidated Fund the cost of the Parliamentary Annuities voted to members of the Royal Family (apart from The Duke of Edinburgh). Those annuities are taxable on the recipients but the amounts used to meet expenditure on carrying out official engagements can be relieved from tax by Treasury Order. In calculating the income of the Privy Purse which is taxable in the hands of HM The Queen, the reimbursement of annuities can be deducted. Similarly, any excess of official expenditure which the annuities are insufficient to cover is met by HM The Queen out of the Privy Purse and can also be deducted from taxable income.
7. There are no annuities payable to The Prince of Wales and his family because of his entitlement to the income from the Duchy of Cornwall. But the MOU provides

for official expenditure incurred by the Prince to be deducted from taxable income. It makes no explicit recognition of expenditure incurred by the Princes on their own engagements, since at the time of its agreement, there was no such expenditure in prospect. [REDACTED]

[REDACTED] [Out of scope] These expenses will be met from Duchy of Cornwall income and so need to be brought within the scope of the agreed rules for applying tax to that income.

8. The rules on what constitutes official expenditure are set out in the MOU and aim to replicate the general rules on expenses that can be deducted from taxable income. So, for example, the cost of clothes worn on official engagements is not deductible because the general rule is that such expenditure will almost invariably have a personal purpose which makes it disallowable. Similarly, expenditure on running properties and estates is only allowable in respect of their use for official purposes.

9. Our view is that it is entirely in line with existing principle for official expenditure by the Princes paid for out of Duchy income to be deductible in taxing that income. But if the expenditure is to be deducted, it is important that the MOU clearly sets that out. [REDACTED]

[REDACTED] [Out of scope]