Consultation Document

New Income Tax Legislation for South Georgia & the South Sandwich Islands

Summary

As part of its legislative review programme the Government of South Georgia & the South Sandwich Islands (GSGSSI) is reviewing and updating some of its key laws including its legislation on income tax.

This consultation document seeks your views on the changes being proposed to tax legislation for GSGSSI.

The aim of the changes is to put into legislative form the tax rate and the administration for collection of tax (including the administrative and audit provisions that are currently absent).

These proposals have been developed by GSGSSI with advice from the Falkland Islands Government tax office and are based on existing practice but developed to give clarity, a defined right of appeal, simplicity and an accountable tax framework for GSGSSI. We have provided information on the key changes being proposed, together with some questions and answers, to help clarify what the changes mean in practice.

Responses to the consultation should be sent to legal@gov.gs by 6th May 2016..

Introduction

Currently the only tax collected by GSGSSI is income tax which it does by way of a statutory order that effectively amends the current tax Ordinance which dates back to 1939. The majority of the 1939 tax Ordinance is not applied.

We propose to bring in new tax legislation that would reflect the current practical tax arrangements and at the same time introduce provisions to ensure that GSGSSI receives the tax that it should. It would also bring some elements of the tax system more closely into line with that on the Falkland Islands.

The proposals would require employers to keep records of tax paid to GSGSSI. This has not been a requirement previously but has been identified as an important component of a transparent and autonomous tax system. If adopted, we anticipate that the proposals will therefore result in a small increased administrative burden for employers in terms of record keeping and provision of information, but should not result in any greater administrative burden on employees.

Current Income Tax System

The 1939 tax Ordinance sets out a complicated and administratively burdensome tax system applied at the time of the whaling industry. A simplified tax system was subsequently overlaid by statutory order to charge income tax at a flat rate of 7% but only where a person works on SGSSI for 6 months or more. Whilst effective and simple it does not deal with issues of administration, confidentiality, offences, penalties or appeals. Tax is deducted at source by employers (self-employed workers are not liable) and paid to GSGSSI but there is no auditable information provided to GSGSSI so the government cannot check whether the correct amount of tax is in fact being paid.

Discretion is currently exercised in respect of Falkland Island residents who work on South Georgia to the effect that GSGSSI tax is only charged where a person will not be financially disadvantaged from being charged GSGSSI tax where they are also liable for Falkland Island tax. GSGSSI loses tax income from this arrangement and it is not clear why this rule is applied which appears to benefit some GSGSSI taxpayers but not others.

Proposed Income Tax Legislation

The proposed Income Tax Ordinance will repeal and replace the existing tax legislation for SGSSI..

What will stay the same?

- The only tax to be charged will be income tax.

- The tax rate will remain at a flat rate of 7% with no allowances or deductions.

- Tax will still be deducted at source and collected from the employer where the individual liable to pay tax is employed.

- The individuals liable to tax will not change and the exemptions from tax will remain unchanged.

- The way tax is administered in practice will not significantly change.

What will change?

- Liability to income tax will start after 30 days on SGSSI rather than the current period of six months.

  As a British Overseas Territory the levying and collection of tax is an integral part of a government's business and is a demonstration of sovereignty. A period of six months before liability to pay the flat-rate charge to tax arises is an unusually long period and undermines the credibility of the territories tax system. Moving to a threshold of thirty days is proposed to provide consistency with Falkland Island tax rules.

Question - Is 30 days an appropriate period as the trigger for liability to income tax? If not what period do you think would be appropriate?

- The rule that GSGSSI tax is not charged where a Falkland Island resident would be disadvantaged by paying GSGSSI tax in relation to their Falkland Island tax liability will be removed. For the GSGSSI to have a credible tax system it should not forgo tax in order to make a concession for individuals paying tax under a different territories tax regime. The Falkland Islands Tax Office will give a unilateral credit in respect of GSGSSI tax paid against Falkland Islands tax liability for persons resident in the Falklands for tax purposes.

- Employers will be required to keep records and provide information, in particular to:
    - provide advance notice to GSGSSI of people coming to work on SGSSI;
    - make quarterly information returns to their employees and GSGSSI;
    - make an annual return so that the government can be satisfied that the correct tax is being paid and the tax system can be audited.

  This is considered to be a reasonable balance between GSGSSI obtaining sufficient auditable information whilst keeping the bureaucratic burden on employers to a minimum.

Question – are the time periods involved in making administrative returns to GSGSSI reasonable ones for employers to meet?

- The administration of tax will be formalised with the appointment of tax officers and a Collector of Taxes with overall responsibility for the tax system. These officers will have updated powers to require and obtain information, and administer the tax system. There is a new duty to keep tax information confidential and breach of this duty will be a criminal offence. This is an offence in the UK with similar penalties imposed, however in the UK it is a defence if the tax officer can prove that they reasonably believed that the disclosure was lawful or that the information was already in the public domain.

Question - should there be an offence of breach of confidentiality by a tax officer and if so is the suggested penalty appropriate? Should it be a defence if the tax officer can prove that they reasonably believe the disclosure was lawful or the information was already in the public domain? If you think it should not be an offence how should breach of confidentiality be dealt with?

- A process will be introduced to deal with tax disputes. The first stage will be a review by the Collector of Taxes. If this does not resolve a dispute then the matter can be referred to a tax tribunal for determination.

- An updated system of administrative penalties will be introduced for employers that fail to comply with the requirements of the legislation, in addition to paying interest on overdue tax. The penalties are intended to reflect the seriousness of the failing, the amount of tax concerned and the administrative time and costs incurred in dealing with the issue. Penalties can be appealed to the tax tribunal.

- The criminal offences will be updated along with the maximum penalties. The offences are limited to:
    - failing to pay tax as required;
    - providing false information;
    - failing to comply with a requirement of a tax officer; and
    - obstructing a tax officer in the exercise of their functions.

  The maximum penalty for all offences will be £10,000 except in the case of breach of confidentiality by a tax officer and failure to pay tax, which can in addition be punished by imprisonment for up to 2 years.

Responding to Consultation

We encourage and welcome the engagement of our stakeholders in the development of these proposals. If, having read the draft tax ordinance and this consultation document, you wish to comment on the proposals you should send your comments by email to legal@gov.gs. The deadline for comments is 6th May 2016..

FAQs

Who will pay tax?

Individuals will be liable to GSGSSI tax on the same basis as they are currently liable except that the qualifying period for tax will change from 6 months to 30 days. Income tax will be charged on income earned by an individual from working on SGSSI for more than 30 days in a tax year.

In the years 2012-2014, from information provided by the Falkland Islands Tax Office, we estimate that 27 workers visiting SGSSI were liable to income tax in any one year. If the new proposals had been applied over this period we anticipate that approximately 50 individuals would have been liable, while approximately 30% of workers would have fallen under the 30 day threshold and have had no liability to SGSSI tax.

The status of self-employed people will not change and they will not be liable to GSGSSI tax.

What will the tax year be?

The tax year is 1st January to 31st December (the same as the Falkland Islands tax year).

What will the rate of tax be?

The tax rate will not change and will continue at a flat rate of 7% with no allowances or deductions.

Is the change intended to raise more tax revenue?

The purpose of the change is to modernise GSGSSI's tax legislation by putting into legislative form the tax rate and the administration for collection of tax. The change to the qualifying period will mean that additional people become liable to pay tax which could lead to a small increase in revenue. Tax receipts over the last four years have averaged £42,500. It is not anticipated that receipts will increase significantly given the low number of individuals potentially liable to pay tax that will be present on South Georgia for more than 30 days.

How will my tax be calculated?

The following examples may help.

Individual works for less than 30 days = no liability to GSGSSI tax.

Individual works for more than 30 days and earns income of £6000 on South Georgia. GSGSSI tax is applied at a flat rate of 7% with no allowances. Therefore the tax due will be £420.

Could I end up paying more tax in total if I am a Falkland Island Resident for tax purposes?

Yes, the new system could result in a small increase in the total tax you may have to pay as the liability to GSGSSI tax will no longer be waived where an individual would be disadvantaged in the context of their Falkland Island tax liability. Whether you pay more tax will depend on how much income you earn on South Georgia, how long you work in South Georgia and the amount of your Falkland Islands and other worldwide income. However the Falkland Islands Government tax office will apply a unilateral tax credit in respect of GSGSSI tax paid to your Falkland Islands tax assessment.

Queries about Falkland Island tax should be addressed to the Falkland Islands Government Tax Office.

Who will be exempt from paying tax?

The exemptions from tax will remain the same. They will include members of HM armed forces, crew and observers on fishing vessels and vessels supporting the fishing industry, crew on vessels transiting SGSSI waters, and crew and guides on cruise vessels visiting SGSSI. The legislation will provide for the Commissioner to change the exemptions by regulations.

How will the tax be collected?

The Commissioner will appoint tax officers and a Collector of Taxes to administer the tax system. Tax will normally be collected ‘at source’ from the employer of the individual liable for tax.

What will employers have to do?

Employers will need to let GSGSSI know in advance who is coming down to work on SGSSI, when they expect to be there, how long for, and whether they will be coming back again in that tax year.

Employers will be responsible for deducting tax from an employee's wages and paying it to GSGSSI. Tax must be paid within 60 days of the end of each quarter. If payment is late then interest will be added on to the amount.

Employers also have to submit a return to GSGSSI (and to the employee) each quarter to GSGSSI setting out the amount of income earned, the amount of tax deducted and any other information required by GSGSSI. The return must be submitted 14 days after the end of the quarter.

What if there is a dispute about a tax matter?

In the first instance a person affected can refer a dispute to the Collector of taxes to review. The referral must be made within 4 weeks of the issues arising. The Collector of taxes must determine the dispute within 6 months. If the dispute is not determined in this time or if the person does not accept the Collector of Taxes determination then he can refer the dispute to the tax tribunal. The Collector of Taxes can also refer a dispute to the tax tribunal.

The tax tribunal will be made up of members appointed by the Commissioner or the Commissioner may designate an existing tribunal to be the tax tribunal for GSGSSI. It is likely that the tax tribunal for the Falkland Islands will be designated as the tax tribunal for GSGSSI. The tax tribunal will have its own rules of procedure.

<u>Are there any penalties for failing to pay tax or comply with tax legislation?</u>

If an employer fails to comply with an obligation under the proposed legislation then the tax officer can require the employer to pay a penalty (in addition to paying any tax and interest owing).

The tax officer will determine the amount of the penalty. The tax officer will take into account the administrative costs and time incurred in relation to the failure to comply in setting the penalty.

The employer may appeal the penalty to the tax tribunal.

<u>Are then any criminal offences in the proposed Ordinance?</u>

It will be an offence for a tax officer to disclose information except as necessary for carrying out the functions of a tax officer.

It will be an offence if an individual liable to pay tax fails to pay tax – but an employee will not be prosecuted if the failure to pay tax is by the employer.

It will also be an offence if a person provides false tax information, fails to comply with a requirement of a tax officer, obstructs or obstructs a tax officer.

The maximum penalty for all these offences is a fine of £10,000. Disclosure of information by a tax officer and failure to pay tax can also be lead to a prison sentence of up to 2 years.