

ELIZABETH II



Territories of South Georgia
and the South Sandwich Islands

COLIN ROBERTS C.V.O.,
Commissioner.

Income Tax Ordinance 2016

(No: 3 of 2016)

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INCOME TAX ORDINANCE 2016

(No: 3 of 2016)

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(commencement: 1 January 2017)

AN ORDINANCE

To make new provision about income tax.

ENACTED by the Commissioner for South Georgia and the South Sandwich Islands —

PART 1
PRELIMINARY

1. Title

This Ordinance may be cited as the Income Tax Ordinance 2016.

2. Commencement

This Ordinance comes into force on 1 January 2017.

3. Ordinance to bind the Crown

Provisions of or under this Ordinance bind the Crown, and apply to persons in the public service of the Crown as they apply to other persons.

4. Interpretation

(1) In this Ordinance, unless the context otherwise requires —

“prescribed” means prescribed by Tax Regulations;

the “tax quarters” are —

1 January to 31 March;

1 April to 30 June;

1 July to 30 September; and

1 October to 31 December;

“tax information” means information provided to a tax officer, employer, employee or any other person for the purposes of or in connection with a provision of or under this Ordinance;

“Tax Regulations” means regulations under section 18; and

“tax year” means the period beginning with 1 January and ending with 31 December;

“Territory” means the territories of South Georgia and the South Sandwich Islands as defined in the South Georgia and South Sandwich Islands Order 1985 as amended from time to time.

(2) In this Ordinance a reference to employing a person includes a reference to engaging a person (whether by contract of employment, contract for services or otherwise).

PART 2 INCOME TAX

5. The charge to tax

An individual who earns chargeable income is liable to pay income tax at the standard rate.

6. Chargeable income

(1) Income is chargeable if it is earned —

(a) by an individual who is in the Territory for 183 days or more in a tax year (“the residence condition”), and

(b) in respect of work carried out in the Territory (“the work condition”).

(2) For the purposes of the residence condition —

(a) days of arrival or departure count as whole days;

(b) unlawful presence is included, and

(c) it is immaterial whether the individual is present for one period of 183 days or more, or for periods which amount in aggregate to 183 days or more.

(3) For the purposes of the work condition—

(a) work is carried out in the Territory even if preparatory or incidental activities are carried out outside the Territory;

(b) a reference to income includes a reference to remuneration, emoluments and allowances of any kind (but not to the reimbursement of expenditure incurred);

(c) it is immaterial whether income is earned under a contract of employment, a contract for services or otherwise.

7. Rate of tax

The standard rate of income tax is 7%.

8. Exemptions

(1) Tax Regulations may confer exemptions on specified classes of individual.

(2) Tax Regulations conferring an exemption must —

(a) specify the period in respect of which the exemption applies, or

(b) provide that the exemption begins on a date specified by the Regulations and continues until ended by amending Regulations.

(3) Regulations conferring an exemption may be wholly or partly retrospective.

(4) An exemption may be conditional; and a condition may be expressed by reference to a discretion to be exercised by the Commissioner or another specified person or class of person.

PART 3 ADMINISTRATION

9. Tax officers

(1) The Commissioner shall appoint a person as Collector of Taxes with responsibility for the collection and administration of income tax.

(2) The Collector may appoint other tax officers.

(3) Appointments under subsection (1) or (2) shall be on such terms and conditions (including as to remuneration and allowances) as may be specified by the person making the appointment.

(4) An appointment under subsection (1) shall be notified in the *Gazette*.

(5) A tax officer may —

(a) require a person to provide information which the tax officer requires in connection with this Ordinance;

(b) require a person to answer written or oral questions in connection with the actual or potential application of this Ordinance;

(c) require a person to produce documents in connection with the actual or potential application of this Ordinance;

(d) seize or copy documents in connection with the application and requirements of this Ordinance or the commission of an offence under this Ordinance;

(e) take any administrative action that appears to the tax officer to be necessary or expedient for the purposes of giving full effect to a provision of or under this Ordinance.

(6) A person must comply with a requirement of a tax officer under this section (and this section overrides any enactment about confidentiality or data protection).

(7) A tax officer may initiate a prosecution for an offence under this Ordinance.

(8) A tax officer may —

(a) request a public authority of the Falkland Islands, the United Kingdom or any other jurisdiction to provide information which the tax officer reasonably requires for a purpose connected with the operation of this Ordinance;

(b) disclose to a public authority of the Falkland Islands or the United Kingdom information which the public authority reasonably requires for a purpose connected with the operation of tax law.

(9) It is an offence for a tax officer to disclose information otherwise than —

(a) in the exercise of the tax officer's functions,

(b) in accordance with a direction of the Commissioner,

(c) in accordance with an order of a court, or

(d) in accordance with a statutory duty.

(10) A tax officer who is guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding £5,000.

10. Advance notification

(1) A person (“the employer”) who proposes to employ an individual (“the employee”) to carry out work in the Territory in respect of which income tax may be payable must notify a tax officer.

(2) Notification under subsection (1) must specify —

(a) the employee’s name, address and email address;

(b) the expected date of the employee’s arrival in the Territory;

(c) the expected date of the employee’s departure from the Territory;

(d) whether the employer expects the employee to return to the Territory in the same tax year; and

(e) any other prescribed information.

(3) Notification under subsection (1) must state either —

(a) that the employee is not expected by reason of that employment (whether or not taken with any other employment) to incur a liability (or increased liability) for income tax in accordance with section 6(1); or

(b) that the employee is expected by reason of that employment (whether or not taken with any other employment) to incur a liability (or increased liability) for income tax in accordance with section 6(1).

(4) Where a notification under subsection (1) contains a statement in accordance with subsection (3)(a) but it later transpires (whether or not by reason of extension of the employment) that the employee incurs by reason of the employment (whether or not taken with any other employment) a liability (or increased liability) for income tax in accordance with section 6(1), the employer must notify a tax officer as soon as reasonably practicable.

11. Payment on account

(1) This section applies where notification of an expected liability to income tax is given by an employer under section 10(3)(b).

(2) Before the end of the period of 14 days beginning with the end of each tax quarter the employer must —

(a) submit a return to a tax officer, and

(b) make a payment on account of the employee’s liability to income tax, of an amount equal to the amount of liability that the employee is expected to incur in respect of employment in that tax quarter.

(3) The amount of any payment on account made in accordance with subsection (2) may be deducted by the employer from payments made to the employee in accordance with arrangements made by the employer.

(4) The return under subsection (2)(a) must specify —

(a) the amount of income expected to be earned;

(b) any amount deducted; and

(c) any other prescribed information.

(5) The employer must give the employee a copy of each quarterly return, within the period of 21 days beginning with the end of the tax quarter.

(6) The employer must give the employee a consolidated statement for each tax year, within the period of one month beginning with the end of the tax year.

(7) Where payment is not paid within the period specified in subsection (2) interest at the prescribed rate becomes payable on the amount due (and may not be deducted under subsection (3)).

(8) The Collector of Taxes must make arrangements for the refund of payments made under this section in respect of expected liability to income tax where the liability is not incurred; and the arrangements —

(a) may involve repayment to the employer or to the employee, as the Collector of Taxes thinks appropriate in a particular case;

(b) must not depend on the making of a claim or application by the employee or employer; and

(c) must include consideration as soon as is reasonably practicable after the end of each tax year whether refunds should be made.

12. Other payments

(1) This section applies where —

(a) a person (“the employee”) incurs a liability to income tax under section 6 in respect of employment in a tax quarter,

(b) no payments in account of that liability have been made under section 11, or the amount of any payments on account are less than the amount of the liability, and

(c) a tax officer has (after the end of the tax quarter) demanded payment in satisfaction of the liability by notice in writing to the employee.

(2) The employee must make one or more payments to a tax officer before the end of the period of 60 days beginning with the date of the demand.

(3) The payment or payments must amount in total —

(a) where no payment on account was made, to the amount of tax payable, and

(b) where payment on account was made, to the difference between the payment on account and the amount of tax payable.

(4) Where payment is not paid within the period specified in subsection (2) interest at the prescribed rate becomes payable on the amount due.

(5) An employee is not liable to pay tax chargeable under this Ordinance if no demand is made under subsection (1)(c).

13. Tax Tribunal

(1) There shall be a Tax Tribunal to exercise functions conferred by or under this Ordinance.

(2) The Commissioner may appoint members of the Tribunal.

(3) The Tax Tribunal —

(a) may determine its rules of procedure,

(b) must make arrangements to publish any rules determined under paragraph (a), and

(c) may sit in any place outside the Territory as may be authorised by the Commissioner.

14. Penalties

(1) Where a tax officer is satisfied that an employer has failed to comply with an obligation under or by virtue of this Ordinance, the tax officer may require the employer to pay a penalty of an amount specified in the requirement (in addition to any tax and interest owing).

(2) The employer may appeal against the imposition of a financial penalty to the tax appeal tribunal, which may —

(a) confirm the penalty,

(b) cancel the penalty, or

(c) vary the penalty.

15. Offences

(1) It is an offence for an individual to fail to pay income tax or interest as required by this Ordinance.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

(3) It is an offence for a person to provide tax information which is false and which the person knows or ought to know to be false.

(4) It is an offence for a person to fail without reasonable excuse to comply with a requirement imposed by a tax officer under section 10.

(5) It is an offence to obstruct a tax officer in the exercise of functions conferred by or under this Ordinance.

(6) A person who is guilty of an offence under subsection (3), (4) or (5) is liable on summary conviction to a fine not exceeding £5,000.

(7) A person may not be prosecuted for an offence if a tax officer has imposed, or proposes to impose, a financial penalty in respect of the action which constituted the alleged offence.

16. Disputes

(1) This section applies where a dispute arises about —

(a) whether income tax is chargeable under this Ordinance in respect of an individual's earnings;

(b) the amount of income tax payable; or

(c) any other matter concerning the application or interpretation of a provision of or under this Ordinance.

(2) A person affected by the dispute ("the taxpayer") may refer it to the Collector of Taxes for determination (or review, where the dispute concerns an earlier determination of a tax officer).

(3) A reference under subsection (2) must be made before the end of the period of 4 weeks beginning with the date on which the person becomes aware of the issue to be referred.

(4) The taxpayer may refer the dispute to the Tax Tribunal if —

(a) the Collector does not determine the dispute within 6 months, or

(b) the taxpayer does not accept the Collector's determination.

(5) The Collector may refer a dispute to the Tax Tribunal.

(6) A reference under subsection (4) or (5) must be made before the end of the period of 4 weeks beginning with the date on which the taxpayer or Collector becomes aware of the issue to be referred.

(7) A decision of the Tax Tribunal under this section is final and binding on the Collector and all other persons.

(8) Reference to the Collector or to the Tax Tribunal does not excuse payment of tax, interest or other amounts which a tax officer has required a person to pay.

(9) A decision of the Collector or the Tax Tribunal may include provision about incidental matters (including repayment of sums with or without interest).

17. Destination

Receipts under this Ordinance are to be paid into the Consolidated Fund of the Territory.

18. Tax Regulations

(1) The Commissioner may make regulations supplementing this Ordinance.

(2) Without prejudice to the generality of subsection (1), Tax Regulations may make provision about —

(a) timing,

(b) contents of notices,

(c) methods of payment,

(d) proceedings of the Tax Tribunal, and

(e) any other matter that appears to the Commissioner to be necessary or expedient for the purposes of giving full effect to this Ordinance.

(3) Tax Regulations may confer a discretionary function on —

(a) the Commissioner;

(b) a tax officer;

(c) any other specified person.

PART 4 TECHNICAL PROVISION

19. Tax Regulations: supplemental

Tax Regulations may make —

(a) provision that applies generally or only to specified cases or circumstances;

(b) different provision for different cases or circumstances;

(c) incidental, consequential and supplementary provisions.

20. Repeals

The following are repealed (in so far as they apply to the Territory) —

- (a) the Income Tax Ordinance Cap. 32;
- (b) the Income Tax (Amendment) Ordinance 1951 (1951 No.6);
- (c) the Income Tax (Amendment) Ordinance 1954 (1954 No.14);
- (d) the Income Tax (Amendment) Ordinance 1957 (1957 No.3);
- (e) the Income Tax (Amendment) Ordinance 1961 (1961 No.4);
- (f) the Income Tax (Amendment)(No 2) Ordinance 1961 (1961 No.9);
- (g) the Income Tax (Amendment) Ordinance 1962 (1962 No.1);
- (h) the Income Tax (Amendment)(No 2) Ordinance 1962 (1962 No.6);
- (i) the Income Tax (Amendment)(No 3) Ordinance 1962 (1962 No.16);
- (j) the Income Tax (Amendment) Ordinance 1964 (1964 No.6);
- (k) the Income Tax (Amendment) (No 2) Ordinance 1964 (1964 No.7);
- (l) the Income Tax (Amendment) (No 3) Ordinance 1964 (1964 No.2);
- (m) the Income Tax (Amendment) (Dependencies) Ordinance 1965 (1965 No.3);
- (n) the Income Tax (Amendment) Ordinance 1969 (1969 No.1);
- (o) the Income Tax (Amendment) Ordinance 1973 (1973 No.16); and
- (p) the Income Tax (Amendment) Ordinance 1974 (1974 No.1).

Enacted

21st

December 2016



C. Roberts C.V.O.,
Commissioner.