

**INCOME TAX BILL**  
(No. [] of 2016)

ARRANGEMENT OF PROVISIONS

PART I  
PRELIMINARY

Section

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**INCOME TAX BILL**  
(No. [] of 2016)

**A BILL**

**for**

**AN ORDINANCE**

To make new provision about income tax.

ENACTED by the Commissioner as follows:

**PART 1**

**PRELIMINARY**

**1. Title**

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

**2. Commencement**

This Ordinance comes into force when it is published in the *Gazette*.

**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.

**5. 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 []; and

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

(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**

#### **6. The charge to tax**

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

#### **7. Chargeable income**

(1) Income is chargeable if it is earned—

(a) by an individual who is in the Territory for 30 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 30 days or more, or for periods which amount in aggregate to 30 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.

#### **8. Rate of tax**

(1) Income tax is charged at the rate of 7%.

(2) The rate is to be applied to gross income, without deduction for costs or expenses of any kind.

#### **9. Exemptions**

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

(2) 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**

#### **10. Tax officers**

(1) The Commissioner shall appoint—

(a) a person as Collector of Taxes with responsibility for the collection and administration of income tax, and

- (b) other tax officers to assist the Collector.
- (2) An appointment under subsection (1) shall be notified in the *Gazette*.
- (3) 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 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.
- (4) 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).
- (5) A tax officer may initiate a prosecution for an offence under this Ordinance.
- (6) A tax officer may—
- (a) request a public authority of the Falkland Islands or the United Kingdom 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.
- (7) A tax officer who discloses information otherwise than in the exercise of the tax officer's functions or in accordance with an order of a court or a statutory duty—
- (a) commits an offence, and
  - (b) is liable—
    - (i) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both; or

- (ii) on summary conviction, to a fine not exceeding £10,000.

## **11. 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.

## **12. Payment**

- (1) A person (“the employer”) who employs an individual (“the employee”) to carry out work in the Territory in respect of which income tax is payable must—
  - (a) deduct the amount of the tax due, and
  - (b) pay it to a tax officer.
- (2) Before the end of the period of 14 days following the end of a tax quarter an employer must notify a tax officer if there is income tax payable in respect of an employee’s earnings for that tax quarter.
- (3) In respect of each tax quarter during which income tax is payable the employer must submit a return to a tax officer specifying—
  - (a) the amount of income earned;
  - (b) the amount deducted; and
  - (c) any other prescribed information.
- (4) The employer must give the employee—
  - (a) a copy of each quarterly return, and
  - (b) a consolidated statement for each tax year.

- (5) Tax payable in respect of an employee's earnings for a tax quarter must be paid before the end of the period of 60 days beginning with the end of the tax quarter.
- (6) Where payment is not paid within the period specified in subsection (3) interest at the prescribed rate becomes payable on the amount due.
- (7) Failure by an employer to pay tax in accordance with this section does not excuse the employee from payment of tax due; but—
  - (a) an individual is not liable to pay tax chargeable under this Ordinance unless and until payment is demanded by a tax officer, and
  - (b) an employee is not liable for interest accruing under subsection (6).

### **13. Tax Tribunal**

- (1) There shall be a Tax Tribunal to exercise functions conferred by or under this Ordinance.
- (2) The Commissioner may—
  - (a) appoint members of the Tribunal;
  - (b) designate a tribunal with jurisdiction outside the Territory as the Tax Tribunal for the purposes of this Ordinance.
- (3) The Tax Tribunal—
  - (a) may determine its rules of procedure, and
  - (b) must make arrangements to publish any rules determined under paragraph (a).

### **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 as required by this Ordinance.
- (2) A person who is guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both; or
  - (b) on summary conviction, to a fine not exceeding £10,000.
- (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 £10,000.
- (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 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; but Tax Regulations must include provision for the repayment of sums, plus interest, following determinations of the Collector or the Tax Tribunal.

**17. Destination**

Receipts of income tax 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 provisions**

### **19. Tax Regulations: supplemental**

- (1) The power under this Ordinance to make Tax Regulations includes power to amend or revoke.
- (2) 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;
- (b) the Income Tax (Amendment) Ordinance 1951;
- (c) the Income Tax (Amendment) Ordinance 1954;
- (d) the Income Tax (Amendment) Ordinance 1957;
- (e) the Income Tax (Amendment) Ordinance 1961;
- (f) the Income Tax (Amendment) Ordinance 1962;
- (g) the Income Tax (Amendment) Ordinance 1964;
- (h) the Income Tax (Amendment) (No. 2) Ordinance 1964;
- (i) the Income Tax (Amendment) (No. 3) Ordinance 1964; and
- (j) the Income Tax (Amendment) (Dependencies) Ordinance 1965.