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# Guide to the *Income Tax Ordinance*

## Introduction

The Income Tax Ordinance is legislation made by the Government of South Georgia & the South Sandwich islands (the Government). There was previously a system of income tax in place for people who earned income in South Georgia & the South Sandwich Islands (the Territory). However the old income tax system needed updating.

The new income tax system keeps many of the features of the previous tax system. The rate of income tax is 7% and the obligation to pay income tax still starts once a person has been present in the Territory for 183 days. New requirements about how tax should be paid and information that needs to be provided to the Government have been introduced. These requirements are so that the Government can be sure that it is collecting the right amount of tax from the right people.

The tax system is simple for employers and the Government to manage taking into account that there are not many people that are present in the Territory for 183 days or more and who earn income in the Territory each tax year.

## The tax year

The tax year runs from 1st January to the 31st December each year. This is the same as the tax year under the old tax system for the Territory.

The Ordinance divides the tax year into four quarters. This has been done to keep the administration simple. Employers must send information to the government every quarter giving details of who has been working in the Territory and how much they have earned so that tax can be properly calculated and collected.

The tax quarters run from:
- 1st January until 31st March,
- 1st April until 30th June,
- 1st July until the 30th September, and
- 1st October until 31st December.

## Liability to pay income tax

A person who earns income from work carried out in the Territory will pay income tax if they are resident in the Territory for either a continuous period of 183 days or more, or several shorter periods which total 183 days in a tax year. For the purpose of calculating whether a person has been resident in the Territory the day that the person arrives in, and leaves, the Territory are counted. Also, even if a person is in the Territory unlawfully that period will count as well.

Exemption from paying tax

Some people will continue to be exempt from paying tax even if they do spend 183 days or more earning an income from working in the Territory. The exemptions are set out in Regulations made by the Commissioner, and apply to:

- people working on fishing vessels or on other vessels that support the fishing vessels,
- people working on tourist vessels,
- people working on vessels that are just passing through the Territory, and
- serving members of Her Majesty's armed forces, including reserve members and auxiliary forces.

The rate of tax

The rate of income tax is 7%. The tax system does not give any personal allowances and does not have any additional tax bands for higher earners. The 7% rate applies to all those liable to pay tax.

Tax Officers

A Collector of Taxes is appointed under the Ordinance. That person has responsibility for ensuring that taxes are collected and that the tax system is administered properly.

In practice the Collector of Taxes will continue to be the same person who is appointed as the Financial Secretary for the Government and is the Financial Secretary for the Falkland Islands Government. This is a sensible arrangement because the Falkland Islands Government, on behalf of the Government, administers the Territory’s tax system.

The Collector of Taxes appoints Tax Officers to carry out the work required to collect tax and administer the tax system. They are given powers to enable them to do their job. Tax Officers can:

- require a person to provide information, answer questions, and produce documents in connection with income tax collection and administration;
- seize or take copies of documents and take any administrative action that they think is necessary in order to administer the tax system;
- request information from and send information to the United Kingdom and the Falkland Islands for tax purposes.

Tax Officers may only use information they get about a person for tax purposes. Under the Ordinance it is an offence if a tax officer discloses information unless:

- it is disclosed for tax purposes;
- they have been directed by the Commissioner to disclose information;
- it is ordered by the Court; or
- there is another law that says they must disclose information.

Payment and Collection of Tax

It is important to remember that the person who is liable to pay income tax is the person who earns the income and is resident on the Territory for 183 days or more.

To make the administration of tax simpler for the person and the Government, the Ordinance sets out a system under which most tax will be collected directly from a person's employer before they pay the person concerned rather than collecting tax from each person liable to tax.

Notification

When a person (the employer) intends to employ someone (the employee) to work in the Territory the employer must contact the Tax Office and tell them:

- the name of the employee;
- the date they expect that person to arrive in the Territory;
- the date they expect that person to leave the Territory;
- whether that person will be returning to the Territory in the same tax year.;
- whether that person is expected to be in the Territory for more or less than 183 days.

If any of the above information changes, the employer must tell the tax office. This is particularly important in respect of the total number of days an employee is likely to spend in the Territory.

Payment of Tax

An employer who has notified the Tax Office that an employee is expected to remain in the Territory for 183 days or more, must send a return setting out the expected amount of income that will be earned, the amount of tax deducted and any other information required by the Tax Officer to the Tax Office and pay the income tax that will be due on the employee’s earnings within 14 days of the end of each quarter. The employer will then make the appropriate deduction of tax from the person's pay. The employer must give the employee a copy of their return within 21 days that must include the amount of income earned, the amount deducted for tax and any other necessary information. Within one month of the end of the tax year the employer will also give the employee a return covering the whole of the tax year.

If tax is deducted, and because of a change in circumstances the employee does not reside in the Territory for 183 days or more, then any tax paid will be refunded. This refund can be made to the employer to pass on to the employee, or can be made direct to the person concerned.

If there is a shortfall in what the employer pays in tax in respect of an employee liable for tax, then the employee will have to pay the difference himself or herself, but only after payment is demanded from them by a Tax Officer. Tax must be paid within 60 days from the date of the demand. If payment is made late then interest will be charged on unpaid tax at the rate of 3% over the base rate at the Standard Chartered Bank in the Falkland Islands.

<u>Disputes about tax</u>

If a person thinks that they are being asked to pay tax when they should not be, or disagrees with the amount of tax they are asked to pay, or has any other disagreement about their tax they can take the dispute to the Collector of Taxes for a review or decision. They should raise the dispute within 4 weeks from when they become aware of it.

If the Collector of Taxes does not determine the dispute within 6 months or the person does not agree with the decision of the Collector of Taxes then they can refer the dispute to the Tax Tribunal.

The Commissioner appoints the Tax Tribunal and he can decide to choose a tax tribunal that already exists in another Territory. In practice the Tax Tribunal for the Territory will be the Tax Tribunal that has already been set up for the Falkland Islands.

The dispute must be referred to the Tax Tribunal within 4 weeks of becoming aware of the issue to be referred.

The Collector of Taxes can also refer a matter to the Tax Tribunal for determination.

If a dispute is referred to the Tax Tribunal, the decision of the Tax Tribunal is final.

Even though there may be a dispute about the liability to pay tax or the amount of tax that should be paid the taxpayer should still pay the tax that they have been required to pay. If appropriate the Collector of Tax and the Tax Tribunal can require tax to be repaid with interest.

## Enforcement

If an employer does not do what they are supposed to do under the Ordinance then a Tax Officer can require the employer to pay a penalty in addition to any tax or any interest on unpaid tax. The penalty is specified by the Tax Officer and will reflect the seriousness of the failure by the employer. The employer can appeal against any such penalty to the Tax Tribunal.

It is an offence for an individual to fail to pay income tax, however as stated above a person is not liable to pay income tax until a Tax Officer demands it from them. The maximum penalty for failure to pay income tax is £5,000.

If a person knowingly provides false information to the Tax Officer, fails to comply with something that a Tax Officer requires or obstructs a Tax Officer then they also commit an offence. This also carries a maximum penalty of £5,000.

A person will not be prosecuted for the offences above if the Tax Officer has or is going to impose a penalty on an employer for the same thing.

## Other matters

Tax receipts are paid into the consolidated fund of the Government. This is the general fund of the Government which is spent on governing the Territory in areas such as fisheries protection, protecting the environment, managing tourism, maintenance of buildings and protecting the heritage of the Territory.

If needed the Commissioner can make other regulations to deal with the administration of tax.