

PROPERTY TAX BILL, 2019

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ST HELENA

A BILL

FOR

AN ORDINANCE

to introduce a tax on vacant buildings on St Helena; and for incidental and connected purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

Short title and commencement

1. This Ordinance may be cited as the Property Tax Ordinance, 2019, and comes into force on 1 April 2019.

Interpretation

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

“**building**” means any structure on property which has sufficient facilities required for purposes of carrying on a business in or from the property;

“**Collector**” means the Commissioner of Income Tax appointed under section 3 of the Income Tax Ordinance, 2012;

“**commercial property**” means property falling within any of the following classes of use of land and buildings as set out in Schedule 1 to the Land Planning and Development Control General Regulations, 2013:

Class A1: Shops

Class A2: Financial and professional services

Class A3: Restaurants and cafes

Class A4: Drinking establishments

Class A5: Hot food takeaways

Class B1: Business, storage and distribution

Class B2: General industrial

Class C1: Hotels;

“**owner**”, in relation to property, means the proprietor with absolute title of that property registered under the Registered Land Ordinance, 1980, and, where there is more than one person included

in the reference to the owner, such persons are to be treated jointly and severally;
“**vacancy period**” means the period of 270 days referred to in section 4(1) or such proportionate period as determined in accordance with section 4(4), as the case may be;
“**year**” means the financial year commencing on 1 April of a year and ending on 31 March of the following year.

Application of Ordinance

3. This Ordinance does not apply to any property owned by the Crown.

Chargeable buildings

4. (1) Chargeable building means any building that constitutes commercial property and which is vacant for more than 270 days in total during the relevant year.

(2) A building is regarded as being vacant—

- (a) if it is not occupied or used for purposes of actively conducting a business in or from the property; or
- (b) in the case of property falling in Class B1 of the definition of “commercial property” which is classified as use for storage, if less than 25% of the floor space of the building is being so used.

(3) For purposes of subsection (2)(a), a building which constitutes property falling in Class C1 of the definition of “commercial property” is deemed to be used in actively conducting a business in or from that property if the rooms in that building are being advertised at market related rates based on the property condition and services provided by the hotel.

(4) If this Ordinance applies with respect to an owner of any property for only part of a year due to—

- (a) the property being acquired or disposed of by that owner during that year; or
- (b) development permission being granted in that year for any material change of use of that property,

the period of 270 days in subsection (1) must be apportioned in the same ratio as the number of days that this Ordinance applies in respect of that property in that year, bears to the full year.

Tax on vacant buildings

5. (1) There is to be levied in accordance with this Ordinance, a property tax on all chargeable vacant buildings on St Helena.

(2) The tax under subsection (1) is to be charged for each day after the vacancy period that the building remains vacant as referred to in section 4(2), at a rate of—

- (a) £5 per day in respect of any building up to 90m²;
- (b) £10 per day in respect of any building over 90m².

(3) The tax payable under this section is recoverable from the owner of the property as a debt due to the Crown and any outstanding amount of tax may be registered as a charge against the property under the Registered Land Ordinance, 1980.

Exemptions

6. (1) The tax under section 5(2) is not payable in respect of any day that a building is unoccupied—

- (a) while under renovation or construction with valid planning permission, for a period up to 2 years after planning permission was granted, or such longer period as the Collector may approve;
- (b) while the occupant is receiving medical care;
- (c) due to the death of the occupant within the last 6 months;
- (d) for a period of up to 3 months from the date of the grant of probate in the case of inherited property;
- (e) for a period of up to 6 months while being advertised for public sale;
- (f) in the case where a receiver is appointed to administer the assets of the owner or occupier, for a period of 6 months from the date the receiver is so appointed.

(2) A structure which is not fit to be used for purposes of carrying on a business in or from the property, having regard to the facilities of that structure, is exempt from the tax for a period of 2 years from the date of this Ordinance.

Notice of vacancy and payment of tax

7. (1) Every owner of property to which section 4 applies in any year, must before 1 June of the following year—

- (a) submit to the Collector a return containing information on the number of days that any building on the property was vacant and whether or not any of the exemptions in section 6 apply in respect of any of those days; and
- (b) together with such notice submit payment of the tax under section 5.

(2) The Collector may prescribe the form of the return to be submitted under subsection (1).

Records

8. Every person who owns any property in respect of which this Ordinance applies, must for purposes of this Ordinance keep record of all periods during which any buildings on that property are vacant.

Assessment by Collector

9. If a property owner—

- (a) fails to submit a return under section 7; or
- (b) submits a return which in the opinion of the Collector does not reflect the correct number of days that any building on the property was vacant; or
- (c) claims an exemption in the return which the opinion of the Collector does not apply,

the Collector may issue an assessment in respect of the estimated number of days that the building was vacant and levy the tax accordingly.

Penalty for failure to comply

10. (1) A person who fails to submit a return as required by section 7(1)(a) is liable to pay

an administrative penalty of £100 plus £10 for each complete month that the return or statement remains outstanding.

(2) If any amount of property tax is not paid by the due date prescribed in section 7(1)(b), a penalty must be added to the amount of tax, calculated as—

- (a) 10% of the amount of tax outstanding at the due date; and
- (b) 1% per month of the amount of tax that remains outstanding after the expiration of one month from the due date.

(3) If a person—

- (a) makes a statement to the Collector that is false or misleading in a material particular; or
- (b) omits from a statement made to the Collector any matter or thing without which the statement is false or misleading in a material particular,

and the tax liability of the person computed on the basis of the statement or omission is less than it would have been if the statement or omission had not been false or misleading (the difference being the “tax shortfall”), the person is liable—

- (i) if the statement or omission was made knowingly or recklessly, to a penalty equal to 75% of the tax shortfall;
- (ii) in any other case, to a penalty equal to 20% of the tax shortfall.

(4) The penalties under this section are due and payable without formal assessment or demand, but no proceedings may be commenced in any Court in respect of the alleged failure to pay such a penalty unless the Collector has first made a written demand for payment and allowed a period of at least 21 days for the payment to be made.

(5) If a penalty remains unpaid after the time allowed for payment in a written demand issued under subsection (4), section 5(3) applies to the recovery of the penalty as it applies to the recovery of any unpaid property tax.

(6) The Collector may remit part or all of the penalty imposed under this section, if the Collector is satisfied that—

- (a) the person’s failure to submit a return or pay tax was due to a cause beyond the person’s control or because it is considered reasonable to do so; or
- (b) the person who made the statement or omission did not know and could not reasonably be expected to know that the statement or omission was false or misleading in a material particular.

Appeal against certain decisions of Collector

11. (1) A person who is aggrieved by any decision of the Collector under section 9 or 10(6) may, within 21 days after the date of the assessment or the decision not to remit part or all of the penalty, appeal against the decision to the Magistrates’ Court.

(2) Upon any such appeal, the Court may confirm, reverse or vary the decision of the Collector.

Offences

12. It is an offence for a person to—

- (a) fail to submit a return as required by section 7; or
- (b) submit a return knowing it to be false or incorrect in any material particular.

Maximum Penalty: A fine of £500 or imprisonment for 12 months, or to both.

Liability in case of body corporate

13. (1) If an offence under this Ordinance is committed by a body corporate, and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, or otherwise concerned in the management of the body corporate, that person (as well as the body corporate) commits that offence and is liable to be proceeded against accordingly.

(2) Where, if it were a body corporate, an unincorporated body of persons would by virtue of subsection (1) have committed an offence under this Ordinance and it is proved that the relevant unlawful act or omission was committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, or otherwise concerned in the management of that body, that person commits that offence and is liable to be proceeded against accordingly.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

The purpose of this Ordinance is to impose a Property Tax on any buildings that are vacant for an extended period of time. This tax applies only in respect of the commercial properties on St Helena. Persons who own commercial property on St Helena need to keep record of any periods during which any buildings on such property are vacant. If it is unoccupied for more than 270 days during a year, the tax is charged for each day the building remains vacant after the 270 day period at a rate of £5 on buildings up to 90m² and £10 on buildings over 90m².