



Guide to Corporation Tax in the Falkland Islands for Non-resident Offshore Contractors

1. Introduction

General

- 1.1 This is an introductory guide to Corporation Tax (CT) as it applies to companies which are not resident in the Falkland Islands (FI) but are engaged as offshore contractors in connection with the exploration and exploitation of so much of the bed and subsoil and their natural resources as is situated beneath FI controlled waters.

This guide has been written in general terms, it does not have any legal force or bind the FI Government Taxation Office (FIGTO) in any way. It should be read in conjunction with the Taxes Ordinance 1997 and associated legislation and regulations, which are available online at www.legislation.gov.fk

Readers familiar with the UK corporate tax system may notice some similarities in FI legislation. However there are major differences of substance and it is best therefore not to rely on UK experience in any area without checking that the relevant legislation is the same as it is in FI.

Offshore Contractors

- 1.2 Offshore contractors are companies who perform services to petroleum licensees such as contractors engaged by the licensees, for example, an offshore drilling rig operator and also include offshore sub-contractors engaged by the offshore contractors.

Employees remuneration

- 1.3 The guide also describes what action is required from offshore contractors in connection with remuneration paid to their employees.

2. Liability to CT

Profits taxable

- 2.1 The profits from activities carried on in FI controlled waters in connection with exploration and exploitation are chargeable to CT in FI. The FI accounting period for those companies with personnel on board a rig/vessel will commence when the drilling rig/vessel first enters FI designated waters.

UK resident companies

- 2.2 UK resident companies are covered by the Double Taxation Relief Arrangement (Treaty) between FI and UK. Special rules are included in respect of profits from activities connected with offshore oil and gas exploration and exploitation. Profits from such activities are deemed to arise through a permanent establishment – there is no requirement to identify an actual permanent establishment – and subject to a de minimis time rule are taxable in FI if the location of the activities is in FI controlled waters.

Treaty restriction

- 2.3 The de minimis time rule available to UK resident companies is 30 days in any 12 month period. Where a UK resident offshore contractor carries on activities in FI controlled waters in connection with exploration or exploitation for a period or periods not exceeding in the aggregate 30 days in any 12 month period, any profits from those activities will not be taxable in FI.
- 2.4 Treaty restriction example 1 – where a UK resident offshore contractor carries on a 25-day activity during December 2017 and does not return to FI until 18 months later, profits from the 25 days activity would not be taxable in FI.
- 2.5 Treaty restriction example 2 – however, if in the example at 2.4, the UK resident offshore contractor returned to FI in 2018 and carries on a 10-day offshore activity in November of that year both periods would fall outside the de minimis time rule in the treaty because the aggregate 30 days period had been exceeded. As a consequence profits from the 25 days activity as well as the 10 days activity would be taxable in FI.

3. Rate of CT

- 3.1 Corporate non-resident offshore contractors involved in exploration or exploitation will be chargeable to CT at the normal (or full) rate of 26%.

4. Accounting Periods, Payment and Filing Dates

Accounting periods

- 4.1 CT is charged by reference to accounting periods. Accounting periods for non-resident offshore contractors normally coincide with the actual period of offshore activity and will normally not exceed 12 months. Where the period of activity exceeds 12 months then the accounting period of the company will end on the earlier of 12 months or the accounting date of the company. The final date will be when the company ceases activity in FI.

Pay & File

- 4.2 The FI operate a Pay & File system for paying CT and for making returns by companies.

Payment requirement

- 4.3 Under Pay and File, CT will normally be payable without demand 8 months and 1 day after the end of the accounting period. Interest on unpaid tax will automatically run from the due date whether or not an assessment has been issued. Interest on any overpayments is also calculated by reference to the due date for payment.

Filing requirement

- 4.4 Companies are required to deliver a return of income by the filing date, 9 months after the end of the accounting period. There are penalties for late returns which start at £100 and increase up to £1,000 plus 20% of any CT paid late for longer delays and repeated failures.

Pay & File example

4.5 These rules are illustrated by the following example:

A company is engaged as an offshore contractor on activities in FI controlled waters in connection with exploration during the period from 1 May 2018 until 31 October 2018. The company must pay its CT liability in respect of this short period of activity on or before 1 July 2019 - there is no need for FIGTO to make an assessment as the liability arises automatically - otherwise interest will run. It should file its return of income on or before 31 July 2019 to avoid automatic penalties.

5. Filing Requirement

5.1 Non-resident offshore contractors are required to file the following:

- FI CT Return (these are not automatically issued but a template for the return is available from FIGTO);
- accounts of the company (that is showing worldwide receipts and expenses and assets and liabilities) which include the period of FI activity; and
- CT computation in respect of the period of FI activity to show adjustments and capital allowances claims etc.

5.2 Generally the Commissioner will also require the production of the trading accounts in respect of the period of FI activity or if no trading accounts are available a profit statement setting out the results from the exploration activities carried on in FI.

6. Calculation of Profit Statement

Income

6.1 In preparing the trading accounts or the statement of income and expenditure in connection with offshore exploration activities it is expected that the income would be taken direct from the contract or the invoice – there should normally be no need to resort to a method of apportionment in order to arrive at the income.

Expenditure

6.2 Similarly expenditure directly relating to the performance of the contract (labour, materials etc.) should be the actual sums incurred and it is only in the area of indirect expenditure that companies may need to resort to a method of apportionment in order to determine the amount of the expenditure incurred for the purposes of the exploration activities. See 9.5 regarding employers' Medical Services Tax payments.

Expenditure test

6.3 All expenditure claimed must satisfy the purposes test i.e. the expenditure must be wholly and exclusively incurred for the purposes of the FI business.

Transfer Pricing

6.4 The Taxes Ordinance 1997 contains provisions for transfer pricing adjustments to be made where transactions with related companies are not on an arms length basis.

7. Allowances for Capital Expenditure

25% allowance

- 7.1 In arriving at the taxable profits, depreciation allowances can be claimed at the rate of 25% on capital expenditure on the acquisition of any machinery or plant which is used for the purposes of the offshore activities.

General rules

- 7.2 The percentage allowances above are claimed on a "reducing balance" basis on written down value. When the asset is disposed of, there may be a recapture of allowances already given.

Special rules – arrival & departure

- 7.3 There are special rules to cater for machinery and plant being introduced into FI after acquisition and similarly withdrawn from FI prior to disposal. Allowances are also restricted by reference to the reduction in value of the assets in the taxpayer's accounts.

8. Collection of CT

Method of payment

- 8.1 Corporate non-resident offshore contractors can pay any CT by transfer of funds (please contact our office for further details) or cheque sent to FIGTO. Cheques should be in £ sterling and made payable to the Falkland Islands Government.

Recovery of unpaid assessed tax

- 8.2 Provision is made in the Taxes Ordinance for tax assessed on a non-resident to be collected, in default, from the licensee with whose exploration the non-resident's activities are connected.

9. Employer Responsibilities

Payment on Account of Tax (POAT)

- 9.1 Where a non-resident offshore contractor pays remuneration to one of its employees in connection with the offshore exploration or exploitation activities being carried on in FI controlled waters it is required to deduct POAT from payments it makes and remit those sums to FIGTO at regular intervals. There is a separate guide available from FIGTO which explains how the system operates.

Flat rate

- 9.2 In respect of non-resident employees in FI, the POAT/MST/RPC liability arises from the date of their arrival at Mount Pleasant/Stanley if by air or when their rig/vessel first enters FI designated waters.

In operating POAT, for 2018 the flat rate is 21% for Income Tax. This arrangement applies to both onshore and offshore personnel. POAT applies to the remuneration which has been paid in respect of FI activities, including wages during an off-duty period, vacation pay and bonuses. If somebody is working a regular shift pattern with say, 28 days on and 28 days off, and returns to FI for the next 28 days on board, all of the remuneration for those 3 periods are treated as remuneration which relates to the FI contract.

UK employees

- 9.3 The de minimis time rule available to UK resident companies is not available to their UK resident employees working in connection with exploration activities in FI controlled waters. As a consequence UK residents are liable to tax from the first day of the performance of the duties.

Hire of labour

- 9.4 Non-resident offshore contractors should be aware that the use of employment agencies and other similar concerns for the supply of labour may still result in the payment of POAT by them in respect of these workers. There is provision in the Taxes Ordinance to require someone who is not the employer of an employee – but for whom the employee works – to deduct POAT on that employee's earnings. This is activated by way of a direction by the Commissioner of Taxation to "the relevant person" (the end user of the labour) to deduct POAT if he considers that "the contractor" (the employment agency or similar concern) is unlikely to account directly for the POAT.

If an individual is engaged via an employment agency solely as the provision of labour then whoever engages the individual as the client and who controls his activities has responsibility as an employer for operating POAT/MST/RPC.

Medical Service Tax (MST)

- 9.5 There is an Employee MST deduction employers are required to apply to their employees' salary and an Employer MST which employers are required to pay on their employees' total gross salary including any benefits in kind.

Under the Taxes Ordinance, employers' MST payments are not an allowable expense in calculating profits liable to CT.

All the MST rates for 2018 were decreased to 0%.

Retirement Pensions Contributions (RPCs)

- 9.6 All enquiries about RPCs should be addressed to Pensions Office, Falkland Islands Treasury, Thatcher Drive, Stanley, Falkland Islands, FIQQ 1ZZ Tel (+500) 28415, pensionsclerk@sec.gov.fk

Employees POAT paid by employer

- 9.7 Where a company pays POAT on behalf of its employees, the net amount (see note B below) should be grossed up before tax is calculated. For example, if an employee receives £4,000 for working in FI, the tax calculation should be as follow.

Gross salary	$4,000 \times 100 / 79 = £5,063.30$
Tax due	$5,063.30 \times 21\% = £1,063.30$

Notes:

- A - The above calculations are based on 2018 rates of flat rate POAT at 21% and 0% Employee MST
- B - Only allowable FI deductions should be taken into account for the purposes of arriving at the net amount for FI tax purposes e.g. UK Gross £7,000 with UK payroll deductions of £2,300, the net amount for FI tax purposes to be used for the starting point of grossing up will be £7,000

Recovery of unpaid deductions

9.8 The provision in 8.2 above regarding recovery from licensees also applies to deductions under the POAT regulations.

Employee's liability to Income Tax

9.9 Non-resident employees have the option at the end of the calendar year either to accept the POAT deductions as representing the tax due on their remuneration or to complete a Declaration of Income to receive an assessment.

Declaration forms are available on request from FIGTO and need to be submitted by the end of the following year. UK resident employees should note that any refund of POAT resulting from submission of a Declaration of Income form may reduce the tax credit available to them under the Double Taxation Relief Arrangement between UK and FI.

10. Contact Information

Any enquiries concerning tax should be sent to:

Taxation Office	Email	general@taxation.gov.fk
St Mary's Walk		
Stanley	Tel	(+500) 28470
Falkland Islands		
FIQQ 1ZZ		

Guides and returns are also available online at www.fig.gov.fk/treasury/index.php/taxation