



FALKLAND ISLANDS GOVERNMENT TAXATION OFFICE



Guide to Corporation Tax in the Falkland Islands for accounting periods commencing on or after 01 January 2019

1. INTRODUCTION

General

1.1 This is an introductory guide to Corporation Tax as it applies to companies either resident in, or with business activities in, the Falkland Islands (FI).

This guide has been written in general terms; it does not have any legal force or bind 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 recommended not to rely on UK experience in any area without checking the relevant FI legislation.

This guide also includes a description of the actions required by Companies paying remuneration to staff working in the FI.

Please note that this guide does not cover Corporation Tax as it applies to non-resident contractors involved in the offshore oil industry. There is a separate guide relating to non-resident offshore contractors which is available from FIGTO.

2. COMPANY RESIDENCE

2.1 A company's residence determines the extent to which its income is chargeable to FI Corporation Tax.

2.2 A company will be resident in the FI if it is incorporated in the FI. A company will also be considered resident in the FI if its central management and control is exercised in the FI.

2.3 If the company is neither incorporated in the FI nor centrally managed and controlled here, it is non-FI resident for tax purposes.

3. LIABILITY TO CORPORATION TAX

3.1 For FI resident companies, profits from their worldwide activities are chargeable to FI Corporation Tax. 'Profits' mean the total income of the company, excluding any exempt income, in an accounting period, less any deductions authorised by the Taxes Ordinance 1997.

3.2 For non-FI resident companies, their liability to FI Corporation Tax depends on whether they are resident in the UK or not.

3.3 UK resident companies are covered by the Double Taxation Relief Arrangement ("Treaty") between the FI and UK. This is the FI's only double taxation treaty.

Profits of a UK resident company are chargeable to FI Corporation Tax if the company carries on business activities in the FI through a permanent establishment.

Only so much of those profits that can be attributed to the permanent establishment are taken into account for FI tax purposes.

A permanent establishment is triggered in a number of circumstances.

The first is where the company carries on all or part of its business through a fixed place of business. The Treaty gives a non-exhaustive list of what would usually be considered to be a permanent establishment and includes an office, branch, workshop, place of management or factory. The fact that the company does not own the premises that it is operating out of will not usually be considered a relevant factor in determining the existence of a permanent establishment, nor will the fact that it shares the space with anyone else.

A permanent establishment may also exist where an employee or other dependent agent of the company habitually concludes contracts in the FI and on behalf of the company.

The Treaty also defines a permanent establishment as a building site or other construction project, though this is subject to a de minimis time limit of six months.

FIGTO follows Organisation for Economic Co-Operation and Development (OECD) principles in administering the Treaty.

3.4 Companies that are neither resident in the FI nor the UK have a lower threshold in relation to their exposure to FI Corporation Tax. These companies are liable to Corporation Tax on the profits of their FI business activities.

Permanent Establishment Examples

Example 1: ABC Engineering Limited, a UK resident company, is subcontracted to provide civil, mechanical and electrical engineering services on the construction of a new housing development in the FI. The contract is scheduled to last 18 months and the company has employees working at the construction site between January 2017 and June 2018. ABC Engineering Limited will be treated as

having a FI Permanent Establishment on the basis of it carrying out its business on a construction project for more than the six months minimum.

Example 2: XYZ Catering Limited, a UK resident company, provides catering services under a sub-contract. The catering contract is for ten years and during that time, XYZ Catering Limited's staff are provided with kitchen facilities. Although the company does not own the kitchen facilities, the staff habitually use them and so the company is treated as having a fixed place of business PE. This is because the company's business is undertaken at a distinct location and with a degree of permanence.

These examples are not exhaustive. This is a complex area of tax and we recommend that you seek professional advice.

4. RATE OF CORPORATION TAX

4.1 The FI has two rates of Corporation Tax. Profits up to a threshold amount of £500,000 are liable to Corporation Tax at 21%, with profits over £500,000 being subject to a rate of 26%.

The threshold amount of £500,000 is apportioned by the number of worldwide associated companies that the company has.

5. ACCOUNTING PERIODS, PAYMENTS AND FILING DATES

5.1 A company's tax liability is calculated by reference to its profits in its accounting periods.

5.2 A company's first accounting period will begin when it first comes within the charge to Corporation Tax.

A non-FI resident company's first accounting period will begin when it commences activities in the FI or otherwise acquires a FI source of income.

However, a UK resident company's accounting period will commence when it begins to trade through a permanent establishment.

5.3 A company's accounting period will end on the earlier of 12 months from the start of its accounting period, the date to which the company makes up its accounts, the date that the company ceases to trade in the FI or the date that the Company ceases to be within the charge to Corporation Tax.

Pay & File

5.4 The FI operates a Pay & File system for paying Corporation Tax and for making returns by companies.

Payment requirement

5.5 Under Pay and File Corporation Tax is 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 regardless of whether an assessment has been issued.

5.6 Statutory interest is calculated by reference to the Standard Chartered Bank (Falklands Branch) Base Lending Rate plus 3%.

Filing

5.7 Companies are required to deliver a Corporation Tax return (as well as various other documents, see section 6 below) by nine 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 Corporation Tax paid late for longer delays and repeated failures.

Pay and File Example

ABC Limited is a UK resident company. It begins its activities in the FI through a Permanent Establishment on 01 May 2018. The company makes up its accounts to 31 December each year, and is still trading through a FI Permanent Establishment at 31 December 2018. The Company's first FI accounting period will be from 01 May 2018 to 31 December 2018. Any Corporation Tax is due and payable on or before 01 September 2019. A Corporation Tax return, accounts and computation should be filed on or before 30 September 2019. The Company's second FI accounting period will begin on 01 January 2019 and will end on the earlier of the date that the Company ceases to trade in the FI through a permanent establishment, or 31 December 2019.

6. FILING REQUIREMENT

6.1 It is the company's responsibility to file tax returns on time.

6.2 Companies are required to file the following:

- An FI Corporation Tax Return (these are not automatically issued but a template for the return is available at www.fig.gov.fk/treasury/taxation and is also available from FIGTO).
- The full accounts of the company showing worldwide income and expenditure.
- A FI tax computation, showing how the figures from the accounts flow through to the Corporation Tax return. A tax computation is also used to make certain claims,

including for loss relief. The tax computation must also include a full breakdown of the calculation of depreciation allowances, if these are being claimed.

- For non-FI resident companies, a statement of income and expenditure covering its FI activities is also required.

7. CALCULATION OF PROFITS FOR CORPORATION TAX PURPOSES

Income and Expenditure

7.1 For FI resident companies, their income will be their total worldwide income earned during the accounting period, and expenditure incurred anywhere in the world *may* be allowable as a deduction against this income. However, see the section below for the general expenditure tests which must be met.

In preparing the trading accounts for the FI activities of non-FI resident companies, it is expected that the income would be taken directly 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.

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 (for instance head office costs) that companies may need to resort to a fair, reasonable and consistent method of apportionment in order to determine the amount of the expenditure incurred for the purposes of the FI activity.

Expenditure Tests

7.2 All expenditure claimed must satisfy the general expenditure tests. The first of these is that expenditure must be incurred in the relevant accounting period.

Secondly, the expenditure must be incurred wholly and exclusively for the purposes of the business.

For non-FI resident companies, this test is met where the expenditure is incurred wholly and exclusively for the purposes of the activities carried on in the FI.

The third test is that the expenditure must not be of a capital nature. However, depreciation allowances are given on qualifying capital expenditure (see section 8 below).

There are a number of specific rules contained within the Taxes Ordinance 1997 governing the deductibility of specific items of expenditure, including the deduction of emoluments before payment and bad and doubtful debts.

Transfer Pricing

7.3 The Taxes Ordinance 1997 contains provisions aimed at ensuring that transactions made between connected persons are treated for tax purposes as though they took place at arm's length.

8. ALLOWANCES FOR CAPITAL EXPENDITURE

Depreciation Allowances

8.1 Depreciation allowances can be claimed for certain assets used for business purposes. For non-FI resident companies, such allowances are only available on assets used for the purposes of the FI activities.

Depreciation allowances are deducted from a company's profits.

There may also be a claw back of any excess depreciation allowances given where the asset is sold.

8.2 Depreciation allowances can be claimed on a number of qualifying assets, including plant and machinery, vehicles, and certain buildings. The Taxes Ordinance 1997 gives the rate and method of calculation of the allowances.

Land is not a qualifying asset for the purposes of depreciation allowances, though the costs incurred in the preparation or cultivation of land in connection with the erection of a building are included within the costs of that building.

9. CREDIT FOR OVERSEAS TAX PAID

9.1 For FI resident companies with overseas sources of income, credit will be given for any foreign Corporation Tax paid on the same income as declared for FI tax purposes.

However, FIGTO will only give credit if the company can support with documentary evidence its claim to have suffered an overseas Corporation Tax charge.

10. LOSSES

10.1 Where a company within the charge to Corporation Tax makes business losses in an accounting period, the company may make a claim to offset that loss against other income of that accounting period as well as the immediately preceding accounting period. A claim made to carry losses back must be made within the period of two years immediately following the loss-making accounting period.

Otherwise, the company can make a claim to carry the loss forward to set against any income in succeeding accounting periods. A claim made to carry losses forward must be made within six years of the end of the loss-making accounting period.

Claims for loss relief can only be made where the loss was sustained in a business being carried on in a commercial manner and with a view to the realisation of profits.

Claims for loss relief are made on the tax computation.

10.2 If the loss making company is resident in the FI and part of a group, provisions exist for the company's losses in an accounting period to be surrendered by way of group relief to another FI resident company in the same group.

Group relief claim and surrender forms are available by contacting FIGTO.

11. COLLECTION OF CORPORATION TAX

Method of payment

11.1 Companies can pay any Corporation Tax liability by cheque at FIGTO, St Mary's Walk, Stanley, FI. Cheques should be in £ sterling and made payable to the FI Government. Payments can also be made by transfer of funds to the FI Government bank account. However, transfers of funds from overseas are subject to a £35 bank charge per transaction, which the company is required to cover.

11.2 The FI Government now operates a UK bank account with Lloyds Bank. The FI Government is now accepting payment of Corporation Tax into this account.

11.3 FIGTO has a guide to making payments which is available on request.

12. EMPLOYERS' RESPONSIBILITIES

Payment on Account of Tax (POAT)

12.1 Companies paying remuneration to staff engaged in activities in the FI are required to deduct POAT from payments made to their employees and to remit those sums at monthly intervals to FIGTO.

The employer must deliver a POAT return and remittances to FIGTO on or before the 14th of the month in relation to the POAT required for the previous month.

12.2 Retirement Pension Contributions (RPCs) are compulsory for those above 17 years of age who are in employment and earning above the weekly limit.

For further information about RPCs please contact the Pensions Office on pensionsassistant@sec.gov.fk or call (00500) 28417.

POAT Deductions

12.3 In respect of employees a POAT liability arises from the date that they begin to work in the FI.

For employees who are not FI tax-resident (i.e. present in the FI for fewer than 183 days in a tax year), a flat rate POAT deduction of 21% should be withheld from those employees' pay and remitted to FIGTO. For these employees, no personal allowance is given through the POAT regime.

12.4 FI resident individuals are entitled to a full personal allowance of £15,000 and the POAT deductions to be made and remitted to FIGTO reflect this.

12.5 An employer workbook is available from FIGTO. The workbook gives the deductions required from an employee's salary.

The workbook also provides the forms that need to be submitted to FIGTO.

12.6 POAT applies to the remuneration which has been paid in respect of FI activities. This includes wages during an off-duty period, vacation pay and bonuses. If an employee is working a regular shift pattern with for instance, 28 days on and 28 days off, and returns to FI for the next 28 days, all of the remuneration for those three periods are treated as remuneration which relates to the FI duties.

12.7 Where an employer pays the POAT on behalf of its employees (i.e. the employee receives "free of tax" remuneration), the amount paid to employees should be grossed up and POAT deductions calculated thereon.

12.8 In calculating the FI POAT due, no account is given for any overseas payroll taxes suffered on the same amounts.

12.9 MST is usually collected through the POAT deductions and remittance process. However, as of January 2018, the rate has been set at 0% for both employers' and employees' contributions.

Use of Employment Agencies

12.10 Companies should be aware that the use of employment agencies and other similar arrangements 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.

12.11 Similar provisions exist for those individuals who supply their labour through an intermediary, for instance a personal service company. In these circumstances, where the end-user of the labour makes a payment to the intermediary for the labour, that payment is deemed to be remuneration with the POAT regulations brought into play accordingly. The user of the worker is then required to operate POAT.

12.12 FIGTO has a guide to the taxation of individuals employed through agencies and third parties, which is available from our website or on request.

13. Exemption from FI Income Tax, MST and RPCs for Individuals in Defence Related Employment

13.1 For companies engaged in work with the Armed Forces and / or UK Ministry of Defence, it is possible to apply to become a Designated Employer for the purposes of Income Tax, Medical MST and RPCs. The benefit of becoming a Designated Employer is that, where an employee meets certain conditions, they are exempt from Income Tax, MST and RPCs and so monthly POAT returns and remittances would not be required in relation to that employee.

There are separate obligations that a Designated Employer has, most notably having to submit an annual return of relevant income to qualifying employees.

An application form to become a Designated Employer is available from FIGTO.

13.2 The exemption applies to employees' FI Income Tax, MST and RPC liabilities. It does not apply to a company's FI Corporation Tax liabilities.

13.3 There is a separate guide to the exemption available from <http://www.fig.gov.fk/treasury/taxation> or by contacting FIGTO.

14. Withholding Taxes

14.1 The FI has a 10% withholding tax on interest paid or credited by a FI resident company to a company that does not carry on business in the FI. There are a number of countries to which the withholding tax does not apply.

A company paying or crediting the interest to which these provisions apply must submit a return to FIGTO within one month of the date of payment or credit of the interest.

Any tax withheld under this provision must be paid to FIGTO within 30 days of the end of the month in which the interest is paid or credited.

14.2 There is also a 10% withholding tax on the payment of royalties arising in the FI and paid to a person that is not resident in the FI.

For the purposes of the royalty withholding tax, "royalties" is broadly defined and includes payments of any kind made for the use of, or right to use, a number of intangible assets (including patents,

trademarks and processes) as well as payments made for the use of, or right to use, industrial, commercial and scientific equipment.

The payer must notify FIGTO of their liability to the withholding tax within 30 days of the date of payment of the royalty.

Any tax withheld under this provision must be paid to FIGTO within 30 days of the date of payment of the royalty.

15. Contact Details

Falkland Islands Government Taxation Office
St Mary's Walk
Stanley
Falkland Islands
FIQQ 1ZZ

Website: <http://www.fig.gov.fk/treasury/taxation>

Telephone: (00500) 28470

Email: general@taxation.gov.fk