



2016 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 as it applies to companies which are not resident in the Falkland Islands 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 the controlled waters of the Falkland Islands.

This guide has been written in general terms, it does not have any legal force or bind the Falkland Islands Government Taxation Office (FIGTO) in any way. It should be read in conjunction with the Taxes Ordinance 1997 and associated legislation and regulations.

Readers familiar with the UK corporate tax system may notice some similarities in the Falkland Islands 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 the Falkland Islands.

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 CORPORATION TAX

Profits taxable

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

UK resident companies

- 2.2 UK resident companies are covered by the Double Taxation Relief Arrangement (Treaty) between the Falkland Islands & the 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

de minimis time rule are taxable in the Falkland Islands if the location of the activities is in the controlled waters of the Falkland Islands.

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 Falkland Islands 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 the Falkland Islands.

Treaty restriction – example 1

2.4 For example, where a UK resident offshore contractor carries on a 25-day activity during December 2015 and does not return to the Falklands until 18 months later, profits from the 25 days activity would not be taxable in the Falkland Islands.

Treaty restriction – example 2

2.5 However, if in the example at 2.4. the UK resident offshore contractor returned to the Falkland Islands in 2016 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 the Falkland Islands.

3. RATE OF CORPORATION TAX

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

4. ACCOUNTING PERIODS, PAYMENT AND FILING DATES

Accounting periods

4.1 Corporation tax 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 the Falkland Islands.

Pay & File

4.2 The Falkland Islands operate a Pay & File system for paying Corporation Tax and for making returns by companies.

Payment requirement

4.3 Under Pay & File Corporation Tax 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 £1000 plus 20% of any Corporation Tax 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 the controlled waters of the Falkland Islands in connection with exploration during the period from 1 May 2015 until 31 October 2015. The company must pay its Corporation Tax liability in respect of this short period of activity on or before 1 July 2016 - there is no need for the Taxation Office 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 2016 to avoid automatic penalties.

5. FILING REQUIREMENT

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

- The Falkland Islands Corporation Tax Return (these are not automatically issued but a template for the return is available from the Taxation Office);
- The accounts of the company (that is showing worldwide receipts and expenses and assets and liabilities) which include the period of activity in the Falkland Islands; and,
- The Corporation Tax computation in respect of the period of activity in the Falkland Islands 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 activity in the Falkland Islands or if no trading accounts are available a profit statement setting out the results from the exploration activities carried on in the Falkland Islands

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 below 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 Falkland Islands 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 the Falklands after acquisition and similarly withdrawn from the Falklands 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 CORPORATION TAX

Method of payment

- 8.1 Corporate non-resident offshore contractors can pay any Corporation Tax by cheque to the Taxation Office, Secretariat, Thatcher Drive, Stanley, Falkland Islands. Cheques should be in £ sterling and made payable to the Falkland Islands Government. Payments can also be made by transfer of funds, please contact the Taxation Office for further details.

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 EMPLOYERS 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 the controlled waters of the Falkland Islands it is required to deduct Payment on Account of Tax (POAT) from payments it makes and remit those sums to FIGTO at regular intervals. There is a separate guide available from the Taxation Office which explains how the system operates.

Flat rate

- 9.2 In respect of non resident employees in the Falklands, 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 Falkland designated waters.

In operating POAT, the flat rates are 21% for Income Tax and 1% for Medical Services Tax (MST). This arrangement applies to both onshore and offshore personnel. POAT applies to the remuneration which has been paid in respect of the Falkland 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 the Falklands for the next 28 days on board, all of the remuneration for those 3 periods are treated as remuneration which relates to the Falkland 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 on the controlled waters of the Falkland Islands. As a consequence UK residents are liable to income 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 In addition to the 1% Employee MST, **employers are required to pay 1.5%** 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 corporation tax.

Retirement Pensions contributions (RPC)

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

Employees POAT/MST paid by employer

9.7 Where a company pays POAT/MST on behalf of its employees, the net amount should be grossed up before tax is calculated. For example, if an employee receives £4000 for working in the Falklands, the tax calculations should be as follow.

Gross salary: $4000 \times 100/78 = \text{£}5,128.21$

Tax due: $5,128.21 \times 21\% = \text{£}1,076.92$

MST due: $5,128.21 \times 1\% = \text{£}51.28$

Employer MST: $5,128.21 \times 1.5\% = \text{£}76.92$

(Note: The above calculations are based on flat rates for MST at 1% and POAT at 21%)

Recovery of unpaid deductions

9.8 The provision in 8.2 above regarding recovery from licensees also applies to deductions under the POAT regulations from June 2011.

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 the Taxation Office 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 the UK & the Falkland Islands.

10. CONTACT POINTS

Any enquiries concerning tax should be sent to:

Taxation Office
Secretariat
Thatcher Drive
Stanley
Falkland Islands
FIQQ 1ZZ

Tel: (+500) 28470

Fax: (+500) 27144

Email: general@taxation.gov.fk