



FALKLAND ISLANDS GOVERNMENT TAXATION OFFICE

**Guide to Corporation Tax in the Falkland Islands**

**for Companies with a Ring Fence Trade**

## 1. INTRODUCTION

### 1.1 General

This is an introductory guide to Corporation Tax (CT) as it applies to companies who are engaged in connection with the exploration and exploitation of so much of the bed and subsoil and their natural resources as is situated beneath Falkland Islands (FI) controlled waters.

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](http://www.legislation.gov.fk)

Readers familiar with the UK 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.

**All guides, returns or forms referred to in this guide are available on FIGTO's website [www.fig.gov.fk/taxation/](http://www.fig.gov.fk/taxation/) or on request (see point 11 for contact details).**

**Please note that there is a separate guide for companies with non-ring fence trade income who are either resident in, and/or with business activities in, the FI.**

### 1.2 Ring Fence Trade (RFT)

RFT means (refer to sections 140 and 150, Taxes Ordinance 1997) a trade consisting of any of the below activities (whether or not the trade is a separate trade by virtue of those activities):

- any petroleum extraction activities (any activities carried on in connection with searching for/extracting/transporting/effecting initial treatment or initial storage of petroleum, decommissioning/abandoning plant/machinery previously used/designed to be used in connection with a before mentioned activity); or
- any of the following activities, namely, the acquisition, enjoyment or exploitation of petroleum rights; or
- activities of both the above descriptions.

A company, whether FI resident or not, can have RFT. Generally activities in relation to a licence held in connection with FI oil exploration or exploitation are regarded as covering all the diverse activities that make up oil exploration and exploitation activities or rights. Examples of activities generally considered to fall within the scope of RFT include:

- support services
- activities relating to the carrying out of the licence
- activities related to decommissioning
- activities necessary to ensure the efficient carrying out of the activities, for example technical staff.

An activity is unlikely to be viewed as being “in connection with” if it is entirely distinct and separate from and does not support the task of oil and gas exploration or exploitation.

## **2. LIABILITY TO CT**

### **2.1 Residence**

A company’s residence determines the extent to which its income is chargeable to CT.

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.

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

### **2.2 Chargeable profits**

For FI resident companies, profits from their worldwide activities are chargeable to CT. ‘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.

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

UK resident companies are covered by the Double Taxation Relief Arrangement (“Treaty”) between the FI and UK (see point 2.4). This is the FI’s only double taxation treaty.

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

### **2.3 RFT activities**

RFT activities are treated as a separate trade, distinct from all other activities carried on by a company as part of its trade. Within the Taxes Ordinance 1997 specific provisions exist for RFT, for example, Part VI “Special provisions for RFT and related businesses”.

## 2.4 UK resident companies

Profits of a UK resident company are chargeable to CT if the company carries on business activities in the FI through a permanent establishment. Profits from activities connected with oil and gas exploration and exploitation are deemed to arise through a permanent establishment and, subject to a de minimis time rule (see point 2.4.1), are taxable in FI if the location of the activities is in FI controlled waters.

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

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

### 2.4.1 Treaty restriction

The de minimis time rule available to UK resident companies is 30 days in any 12 month period. Where a UK resident offshore company 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.

#### *Examples*

- A UK resident offshore company carries on a 25 day activity during December 2022 and does not return to FI until 18 months later, profits from the 25 days activity would not be taxable in FI.
- However, if in the above example, the UK resident offshore company returned to FI in 2023 and carries on a 10 day offshore activity in November 2023, both periods would fall outside the de minimis time rule in the treaty because the aggregate 30 days period will be 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 CORPORATION TAX

### 3.1 Profits from RFT

Profits from RFT are liable to CT at a rate of 26%.

### 3.2 Non-RFT profits

For non-RFT profits there are two rates of CT. Profits up to a threshold amount of £500,000 are liable to CT 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.

## 4. ACCOUNTING PERIODS, PAYMENTS AND FILING DATES

### 4.1 Accounting periods

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

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

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.

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 CT.

### 4.2 Pay and file

The FI operates a pay and file system for paying CT and for making returns by companies.

#### 4.2.1 Payment requirement

CT 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.

If a company had transactions with a licensee, it may have had Schedule 6 Withholding Tax (WHT) applied as a payment on account of its tax liability. See point 10 for further information.

#### 4.2.2 Filing

Companies are required to deliver a CT return (as well as various other documents, see point 5) by 9 months after the end of the period of account. 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 and file example*

A non-resident company is engaged by a licensee for activities in FI controlled waters in connection with exploration during the period 1 May 2022 until 31 October 2022. The company must pay its CT liability in respect of this short period of activity on or before 1 July 2023 otherwise interest will accrue. There is no need for FIGTO to make an assessment as the liability arises automatically. It should file its return of income on or before 31 July 2023 to avoid automatic penalties.

## 5. FILING REQUIREMENT

It is the company's responsibility to file tax returns on time. Companies are required to file the following:

- A FI CT Return (this return is not automatically issued). As RFT activities are treated as a separate trade and any profits chargeable at 26%, it is necessary to distinguish them on the CT return.
- The full accounts of the company showing worldwide income and expenditure. If the company is non-resident, these accounts should include the period of FI activity.
- A FI tax computation, showing how the figures from the accounts flow through to the CT return. A tax computation is also used to make certain claims. The tax computation must also include a full breakdown of the calculation of depreciation allowances, if these are being claimed.
- For non-resident companies, a statement of income and expenditure covering its FI activities is also required.

## 6. CALCULATION OF PROFITS FOR CT PURPOSES

### 6.1 Income and expenditure

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 point 6.2 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.

### 6.2 Expenditure tests

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 point 7).

As mentioned at point 2.3, there are a number of specific provisions contained within the Taxes Ordinance 1997 for RFT, for example, section 152B. These should be referred to when calculating RFT profits.

### **6.3 RFT and non-RFT**

Where a company has both RFT and non-RFT within an accounting period, the calculation of RFT profits should be separated out in the tax computation.

### **6.4 Transfer pricing**

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.

## **7. ALLOWANCES FOR CAPITAL EXPENDITURE**

Chapter II (Depreciation Allowances), Part V of the Taxes Ordinance 1997 includes specific provisions for ascertaining the RFT income of a company carrying on a RFT for a chargeable period.

## **8. COLLECTION OF CT**

### **8.1 Method of payment**

Companies can pay any tax liability by:

- transfer of funds to the FI Government bank account held with Lloyds Bank United Kingdom (the company is required to cover any charges involved); or
- transfer of funds to the FI Government bank account held with the FI branch of Standard Chartered Bank. However, transfer of funds from overseas are subject to a £35 bank charge per transaction, which the company is required to cover as well as any other charges involved.

FIGTO has available a "Remitting advice from overseas" guide for remitting funds electronically.

### **8.2 Recovery of unpaid assessed CT**

Schedule 6 of the Taxes Ordinance 1997 includes provision for unpaid assessed CT to be collected, in default, from the licensee(s) with whose exploration the company's activities were connected.

## 9. EMPLOYERS' RESPONSIBILITIES

### 9.1 Payment on Account of Tax (POAT)

Companies paying remuneration to staff (whether FI resident or not) 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. For further information on the POAT requirements, please refer to FIGTO's "Employer Guide" which includes details on:

- POAT pay and file deadlines
- POAT rates for resident and non-resident employees
- Remuneration covered by POAT (for example wages for off-duty periods, vacation pay and bonuses)
- Grossing up where the employee receives "free of tax" remuneration
- Use of employment agencies

There is also an "Employers Workbook" which provides the forms that need to be submitted to FIGTO. Both the Guide and Workbook can be found on the FIGTO website.

### 9.2 UK tax resident employees

The de minimis time rule available to UK resident companies (see point 2.4.1) is not available to their UK resident employees working offshore in connection with exploration or exploitation activities in FI. As a consequence UK residents are subject to POAT from the first day of the performance of their duties in FI/FI waters/designated area.

### 9.3 Recovery of unpaid deductions

Schedule 6 of the Taxes Ordinance 1997 includes provision for unpaid amounts which were due in accordance with the POAT Regulations by an employer to be collected, in default, from the licensee(s) with whose exploration the employer's activities were connected.

### 9.4 Employee's liability to Income Tax

For information on the tax treatment of individuals, please refer to FIGTO's "General Guide to Falkland Islands Taxation for Individuals".

## 10. SCHEDULE 6 WITHHOLDING TAX (WHT)

A Schedule 6 WHT was introduced with effect from 1 January 2022. A 3% WHT applies to companies, whether FI resident or not, when being paid for transactions in connection with activities authorized by a licence as a result of which the company is or might be liable to FI tax i.e. transactions falling within "RFT". Refer to FIGTO's "Guide on Schedule 6 WHT" for further details.

## 11. CONTACT DETAILS

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