



Guide on exemption from Schedule 6 Withholding Tax (WHT)

1. Introduction

Following consultation with the industry in early 2020 and mid 2021, a Schedule 6 WHT is being introduced with effect from 1 January 2022. Within the Schedule 6 WHT regime, there is an exemption at Paragraph 2B available for companies who have a history (2 consecutive accounting periods) of good FI tax compliance. This guide provides details on the exemption, the application, the approval process and how the exemption can be lost.

2. General

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, associated legislation and regulations.

3. Summary of Schedule 6 WHT

A 3% WHT should be applied by the licensee when paying companies (whether FI resident or not) for FI activities in relation to a licence held in connection with FI oil exploration or exploitation. However, there are certain cases when WHT should not be applied. These are for goods or services provided or performed outside FI and designated area, and for companies who at the time of payment have a WHT exemption.

WHT is not Corporation Tax (CT) but is a payment on account of the tax liability of the company on which it has been applied. That liability will generally be determined through the normal CT filing and assessing process. The 'Guide on Schedule 6 Withholding Tax' provides further details on this regime.

4. How does the licensee know if a company has the exemption?

A list is maintained by FIGTO of companies that have been granted this exemption. This list is publically available at www.fig.gov.fk/taxation or by request from FIGTO. This list is a living document and the exemption is only effective when the company appears on this list, therefore the licensee should check this list each time they make a payment to a company. The licensee should not apply WHT when paying a company, who at time of payment, has been granted exemption from WHT.

5. How to apply for the exemption

This exemption is available to all companies who meet the good compliance requirements (see points 6.2 and 6.3). To apply for an exemption, the company must complete and submit the 'Application for exemption from Schedule 6 Withholding Tax deduction' to FIGTO for consideration.

Until such time as an exemption is granted, WHT should be applied to payment of all relevant invoices.

For example, a company has FI activity, has already started providing services and issued invoices as their exemption application is being processed. Any invoices in relation to that FI activity which are paid prior to the exemption being granted, should have WHT applied. If the exemption is granted, any WHT applied prior to exemption approval will remain as WHT against the company's record. Any excess identified through the standard filing and assessing process will be available for refund.

6. Processing and review of exemption applications

6.1 Processing times

Completed applications will be accepted by email to oil@taxation.gov.fk or by post and will be processed in order of receipt. Please allow a minimum of 4 weeks for processing and note that processing times make take longer depending on other workloads of FIGTO and volume of applications.

6.2 What periods will be considered for good compliance?

To qualify for an exemption, the company must have 2 consecutive accounting periods of good compliance with all areas of FI tax requirements. *For example*, an application is received in January 2022 for a company with an accounting period end (APE) 30 June. The company has not yet paid or filed for its CT requirements for its APE 30 June 2021, however at the time of reviewing the application the due date for those requirements has not yet been reached and therefore it cannot yet be determined if there is good compliance for that APE. In such cases the 2 most recent APEs on which the due dates have been reached, will be reviewed. In this example it will be APEs 30 June 2020 and 2019.

If the company has not yet been subject to FI tax requirements for 2 consecutive accounting periods, the company will need to wait until the FI tax requirements for the 2 periods have been reached before any application for the exemption can be reviewed.

6.3 What is considered good compliance?

Good compliance is assessed by considering the company's FI record of filing returns, accuracy of those returns and payment of tax by due date.

For the purposes of assessing good compliance for this exemption, due date is to be taken as the date as per the taxes legislation or a date agreed with FIGTO (*for example*, a filing extension agreed with FIGTO prior to the due date as per taxes legislation).

All areas of FI tax requirements will be reviewed. *For example*, a company with employees subject to FI tax will also have employer tax obligations.

If a failure to comply (including not meeting a due date) is identified, below are factors to be taken into consideration as to whether or not the failure is sufficient to refuse the application for exemption.

How long has the failure gone on for? If a failure to comply has been identified for filing a return and/or making a tax payment, as long as that failure does not extend beyond 30 days of the due date and is not a repeated failure, the late filing/payment will not be sufficient to refuse an exemption application.

Was there a repeated failure? A repeated failure is taken as the 2nd subsequent time the company has failed to meet the same requirement without reasonable excuse. *For example*, a company files its POAT return 2 weeks late for June 2021 and files late again for July 2021 by 3 weeks with no reasonable excuse, it would not be considered good compliance when the July 2021 return is filed late.

Was there a reasonable excuse for the failure? *For example*, compassionate or unexpected medical reasons prevented a signed return being filed by its due date and the filing was made as soon as reasonably possible, would not be considered a sufficient failure to refuse the exemption.

If a return was inaccurate, was there a reasonable excuse for the inaccuracy? Was the inaccuracy identified by the company? Was the inaccuracy rectified within reasonable time? Was the inaccuracy material to the return? *For example*, a company is preparing its employers annual return and discovers a casual employee with a wage of gross £200 and Payment On Account of Tax (POAT) £42 was missed off a monthly POAT return. The company averages 200 monthly employees and total gross wages £450,000. The company notifies FIGTO, submits an amended POAT return and pays the outstanding POAT amount, all within a timely manner of identifying the oversight. This would not be considered a sufficient reason to refuse the exemption application as the company identified the error, rectified it with FIGTO in a timely manner and the error was immaterial to the relevant POAT return.

Below are examples of what would not be considered good compliance.

A filing extension was requested after the filing due date and there was no reasonable excuse for not requesting the extension prior to the due date.

Through review and enquiries on the company's accounts, FIGTO discovers the company had employees present in FI for which the company has failed to comply with the POAT Regulations.

7. Exemption approval

The company will be notified if their exemption is approved and their name will be added to the list of exempt companies (see point 4). The exemption becomes effective on the date the company is added to this list.

Any WHT applied prior to exemption approval remains as WHT and cannot be claimed as a refund until any excess is identified through the standard filing and assessing process.

If following the approval of an exemption the licensee incorrectly applies WHT, the licensee and the company should resolve this matter between themselves. In such cases, if the WHT has already been remitted to FIGTO, the licensee can contact FIGTO for a refund for them to then arrange reimbursement to the company.

8. Exemption refusal

If it is determined the company does not meet the good compliance requirements (see points 6.2 and 6.3), the applicant will be notified with a full explanation.

A refusal does not prevent the company from reapplying. *For example*, the accounting periods reviewed with the application were for the APEs 30 June 2020 and 2021, a failure was identified in the earliest APE 30 June 2020. The company can reapply after its APE 30 June 2022 when they believe they have had good compliance for that period and the immediately preceding period.

9. Losing the exemption

A company loses its exemption on the first instance that it fails without reasonable excuse to comply with any of its FI tax obligations. See points 6.2 and 6.3 for details of what is considered good compliance and how it is assessed. The company's name will be removed from the list referred to in point 4 and the exemption is lost from that date of removal. FIGTO will notify the company of their removal with a full explanation.

Losing the exemption does not prevent the company from reapplying. *For example*, a company loses its exemption within its APE 30 June 2023. The company can reapply after its APE 30 June 2025 when they believe they have had good compliance for that period and the immediately preceding period.

10. Appeal to the Tribunal against a decision to refuse or remove a WHT exemption

There is no specific objection or appeal provisions in relation to a WHT exemption being refused or removed. However, section 181(1)(e) Taxes Ordinance 1997 allows an appeal to the Tribunal by any person aggrieved by any other decision of the Commissioner under the Taxes Ordinance 1997. Notice of the appeal must be sent or delivered to the Clerk to the Tribunal within 21 days of the date on which the decision in question of the Commissioner is notified to the appellant or such longer period as the Commissioner, in his discretion, may allow. Please refer to sections 181 and 182 Taxes Ordinance 1997 for further details on the appeal process.

11. Further information and contact points

The Taxes Ordinance 1997, associated legislation and regulations are available at www.legislation.gov.fk

Returns, forms and guides are available at www.fig.gov.fk/taxation/

Email oil@taxation.gov.fk for Schedule 6 and any other oil matters
 general@taxation.gov.fk for general tax matters