Taxation Office, St Mary's Walk, Stanley, Falkland Islands,
FIQQ 1ZZ
Tel (+500) 28470
Email general@taxation.gov.fk
Website: www.falklands.gov.fk/taxation/
Public opening hours Monday to Friday, 9am – 12 noon

Guide to Corporation Tax in the Falkland Islands

for accounting periods commencing on or after 1 January 2019

1. Introduction

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 (TO1997) 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.

All guides and returns referred to in this guide are available online at www.falklands.gov.fk/taxation/ or from FIGTO.

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.

2. Company residence

A company's residence determines the extent to which its income is chargeable to FI Corporation Tax. A company will be resident in FI if it is incorporated in FI. A company will also be considered resident in FI if its central management and control is exercised in FI. If the company is neither incorporated in FI nor centrally managed and controlled here, it is non-FI resident for tax purposes.

3. Liability to Corporation Tax

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 TO1997.

For non-FI resident companies, their liability to FI Corporation Tax depends on whether they are resident in UK or not. UK resident companies are covered by the Double Taxation Relief Arrangement ("Treaty") between 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 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.

3. Liability to Corporation Tax *continued*

A permanent establishment may also exist where an employee or other dependent agent of the company habitually concludes contracts in FI and on behalf of the company. The Treaty also defines a permanent establishment as a building site or other construction project.

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

Permanent establishment examples ***(these are not exhaustive)***

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 FI. The contract is scheduled to last 18 months and the company has employees working at the construction site between January 2019 and June 2020. 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.

For non-FI resident companies and non-UK resident companies there is 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.

4. Rates of Corporation Tax

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

A company's tax liability is calculated by reference to its profits in its accounting period. 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 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 FI or the date that the Company ceases to be within the charge to Corporation Tax.

6. Payment and filing dates

The FI operates a Pay & File system for paying Corporation Tax and for making returns by companies. 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. Statutory interest is calculated by reference to the Standard Chartered Bank (FI Branch) Base Lending Rate plus 3%.

Companies are required to deliver a Corporation Tax return (as well as various other documents, see point 7) within nine months of 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 Corporation Tax paid late for longer delays and repeated failures.

More information on accounting period and period of account can be found in the CT Pay & File guide on FIGTO's website.

6. 1 Pay and file example

ABC Limited is a UK resident company. It begins its activities in FI through a permanent establishment on 1 May 2019. The company makes up its accounts to 31 December each year, and is still trading through a FI permanent establishment at 31 December 2019. The company's first FI accounting period will be from 1 May 2019 to 31 December 2019. Any Corporation Tax is due and payable on or before 1 September 2020. A Corporation Tax return, accounts and computation should be filed on or before 30 September 2020. The company's second FI accounting period will begin on 1 January 2020 and will end on the earlier of the date that the company ceases to trade in FI through a permanent establishment, or 31 December 2020.

7. Filing requirement

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

- A FI Corporation Tax return (these are not automatically issued but a template for the return is available at www.falklands.gov.fk/taxation/ or 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.

From 1 January 2022 loss claims will need to be made using the CT return which can be found on FIGTO's website.

Companies are asked to check the FIGTO website prior to filing to ensure that they are using the most recent and correct CT return.

8. Calculation of profits for Corporation Tax purposes

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.

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.

For all companies, all business expenditure claimed must satisfy the general expenditure tests. These tests are:

- Firstly, the 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 business activities carried on in FI; and
- Thirdly, the expenditure must not be of a capital nature. However, depreciation allowances can be claimed on qualifying capital expenditure (see point 9).

There are a number of specific rules contained within the TO1997 governing the deductibility of specific items of expenditure, including the deduction of emoluments before payment and bad and doubtful debts.

The TO1997 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.

9. Allowances for capital expenditure

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.

Depreciation allowances can be claimed on a number of qualifying assets, including plant and machinery, vehicles, and certain buildings. The TO1997 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.

There may also be a claw back of any excess depreciation allowances.

10. Credit for overseas tax paid

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.

11. Losses

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 until 1 January 2022, after which they must be made on the CT return.

If the loss making company is resident in 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 on FIGTO's website.

12. Collection of Corporation Tax

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 "FI Government". Payments can also be made by transfer of funds to the FI Government bank account. However, transfers of funds to Standard Chartered Bank from overseas are subject to a £35 bank charge per transaction, which the company is required to cover in addition to their other liabilities.

The FI Government now operates a UK bank account with Lloyds Bank and accepts payment of Corporation Tax into this account.

FIGTO has a guide to making payments which is available on the website or on request.

13. Employer responsibilities

Information on employer responsibilities, employers guides and forms can be found on FIGTO's website.

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

14. Exemption from FI Income Tax, MST and RPCs for individuals in defence related employment

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 Services Tax (MST) and RPCs. The exemption does not apply to a company's FI Corporation Tax liabilities.

The relevant guides and forms can be found on FIGTO's website.

15. Withholding taxes (WHT)

15.1 The FI has a 10% WHT on interest paid or credited by a FI resident company to a company that does not carry on business in FI. There are a number of countries to which the WHT does not apply. A company paying or crediting the interest to which these provisions apply must submit a return to FIGTO and pay any WHT under this provision to FIGTO within 30 days of the end of the month in which the interest is paid or credited.

15.2 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 "ring-fence trade" (refer to sections 140 and 150, TO1997). Refer to the "Guide on Schedule 6 WHT" for further details which is available on the website or from FIGTO.

16. Contact Details

Falkland Islands Government Taxation Office

St Mary's Walk

Stanley

Falkland Islands

FIQQ 1ZZ

Public opening hours Monday to Friday, 9am – 12 noon

Website www.falklands.gov.fk/taxation/

Telephone (00500) 28470

Email general@taxation.gov.fk

Guides and forms can be obtained via the website or by contacting FIGTO using the above details.