



Guide on 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. This guide is aimed at both the licensee required to apply WHT and the companies subject to WHT.

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. Rate of WHT

The rate of WHT is 3%.

4. What amount does WHT apply to?

WHT should be applied to the total gross invoice amount (see point 7.1 for the de minimis amount), irrespective of how it is being paid. This includes disbursements (these can be addressed by the company through their filing with FIGTO – see point 10).

5. Who applies WHT?

The licensee is required to apply, report and remit WHT in relation to any payments they make to a company (see point 6).

6. Who does WHT apply to?

WHT applies to companies, whether Falkland Island (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, Taxes Ordinance 1997). However, there are certain cases when WHT should not be applied, see points 7.1 to 7.3 for further details.

Generally transactions 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 WHT 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.

7. When does WHT not apply?

7.1 Gross payment amount of less than £5,000

WHT is only required to be applied on a gross payment amount of £5,000 or more to a company. *For example*, paying an invoice showing £5,100 due should still have 3% WHT applied with the net amount £4,947 paid to the company. Whereas paying an invoice for £4,500 should not have WHT applied.

7.2 Activity outside FI and designated area

WHT is not required to be applied for payment for goods or services that are wholly provided or performed outside FI and any designated area. *For example*, paying an invoice for materials to take to FI when the materials are supplied in UK and the company supplying them has no activities in FI or designated area in relation to that invoice. The licensee does not need to apply WHT to that invoice.

Where the goods or services were partially provided or performed in FI or any designated area, the licensee must deduct WHT on a proportionate amount of the payment by making a fair and reasonable apportionment.

7.3 WHT exemption

An exemption from WHT is available by application to all companies who have a history (2 consecutive accounting periods) of good FI tax compliance. If at any point following the exemption approval, the company fails to comply with any of its FI tax obligations, the exemption will be lost on first failure without reasonable excuse. The 'Guide on exemption from Schedule 6 Withholding Tax' provides further details on the exemption, the application, the approval process and how the exemption can be lost.

WHT should not be applied when paying a company, who at the time of payment, has an exemption from WHT. A publically available list is maintained by FIGTO of companies who hold this exemption. This list is available at www.fig.gov.fk/taxation/ or from FIGTO and will be updated each time an exemption is granted (the company's name is added) or lost (the company's name is removed). **The licensee should check this list each time they make a payment that may be subject to WHT.**

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 in process. Any invoices in relation to that FI activity that 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 to the company.

If following the approval of an exemption the licensee incorrectly applies WHT, the licensee and the company will need to 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 to them so the licensee can reimburse the company.

8. How is WHT administered

8.1 Invoices denominated in a currency other than sterling

The licensee must translate the invoice on its due date into sterling by using the Bank of England daily spot rate.

8.2 WHT Certificate

When making payment, the licensee should issue a WHT certificate in a prescribed form to the company on which the WHT has been applied. This certificate is to confirm the amount withheld, date of the withholding and exchange rate used if the invoice is not denominated in sterling (see point 8.1). The certificate is for each payment to a company and allows for more than one invoice being paid at the time. *For example*, a licensee is making one total payment to the same company for 3 invoices all of which have had WHT applied, one certificate should be issued to the company for that payment and details of the 3 invoices should be included on that certificate.

8.3 Quarterly returns

The licensee must submit returns in the prescribed form to FIGTO for the quarterly periods 1 Jan – 31 Mar, 1 Apr – 30 Jun, 1 Jul – 30 Sep and 1 Oct – 31 Dec. Previously these returns were required by notice but are now an automatic filing requirement to report payments to any person (whether a company, unincorporated business or individual) for goods and/or services provided in FI and/or any designated area for transactions in connection with activities authorised by the licensee's licence as a result of which the person is or might be liable to tax. These returns are also to report any WHT applied and due to be remitted to FIG.

8.4 Due date for submission of quarterly returns and payment of WHT

The due date for both the submission of quarterly returns and payment of WHT is within 30 days of the relevant quarter end. *For example*, 30 April 2022 is the payment and submission deadline for the quarter ending 31 March 2022. Completed returns can be submitted electronically to oil@taxation.gov.fk or by post. Payment can be made directly into accounts held by Falkland Islands Government either at the Lloyds UK branch or the FI branch of Standard Chartered Bank (payment instructions at Appendix 1).

8.5 Penalties for late filing of quarterly returns

There are penalties for late filing (including incomplete and/or inaccurate) of quarterly returns under Schedule 6. The penalty for the first failure is £1,000 with an additional £1,000 in respect of each successive 15 day period that elapses before the information is provided. If further returns are submitted late, the penalty amount increases to £2,000 for each time it applies to the second late return. The penalty amount increases further to £3,000 for each time the penalty applies to a 3rd and any additional late returns. These failures do not need to occur to consecutive returns for the penalty amount to increase.

For example, the return for the quarter ending 31 March 2022 is submitted 20 days late and this is the first time the licensee has filed late, they will incur total penalties of £2,000. The same licensee then submits the return for the quarter ending 31 December 2022 late by 40 days. As this is the second late return by the same licensee, the penalty amount increases and they will incur total penalties of £6,000.

The Commissioner may wholly or partially remit the penalty on application by the licensee on which it has been charged, if satisfied there was a reasonable excuse for the failure.

Any licensee who, without reasonable excuse fails to comply with the WHT or quarterly return requirements commits an offence and is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale (currently £17,500).

8.6 Late payment interest

Interest will accrue on any WHT that remains unpaid after its due date, at the rate of 3% per annum over the base lending rate of the FI branch of Standard Chartered Bank.

8.7 WHT allocation

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 filing and assessing process. The WHT may be applied at any time in payment or reduction of that company's CT liability in respect of the accounting period in which the WHT was applied or the immediately following or earlier accounting period.

Where a company liable to CT for any accounting period preceding when WHT was applied, and the amount of that liability has been determined, WHT amounts will be applied so that any liability in respect of the earlier accounting period is wholly discharged before any WHT amounts are applied to any liabilities for any later accounting period.

For example, a company has accounting periods ending (APE) 31 Dec 2022 and 2023. During 2022 a total of £9,000 WHT was applied and remitted to FIG. The company met the normal filing requirement of 30 Sep 2023 for its APE 31 Dec 2022 but by their calculations believed the WHT applied in 2022 covered their liability and no CT was due for payment by the due date 1 Sep 2023. When FIGTO issues the company with an assessment for APE 31 Dec 2022, there is additional £1,000 CT due following adjustments to their FI tax computation for non-allowable tax deductions. Over page is the allocation of payments for this example. All WHT remitted prior to the CT due date of 1 Sep 2023 and applied to the APE 31 Dec 2022 would not incur interest charges.

£10,000 total CT due for APE 31/12/2022

£(9,000) total WHT applied & remitted during 2022

£ 1,000 balance due

£ 6,750 total WHT applied & remitted during 2023 to date when FIGTO assess for APE 31/12/2022

£(1,000) applied to earlier APE to pay that liability

£ 5,750 balance remaining to be first allocated to APE 31/12/2023

If, using the same example, when FIGTO issues the assessment APE 31 Dec 2022, the liability was determined as £8,000, £9,000 WHT would still be included as credit in the assessment with the excess of £1,000 being refunded through assessment if the company has no other tax liabilities (see point 8.8).

8.8 Refund applications

The 'Application for refund of Schedule 6 Withholding Tax' should be used by the company to claim a refund in cases where the WHT applied exceeds the company's tax liability for the relevant period or the company does not actually have a FI tax liability.

The refund application also covers claims where the company's FI activities meet paragraph 21(4), Double Taxation Relief Arrangement (UK) Order 1996.

Refunds in respect of WHT or an overpayment of CT will be offset against any overdue liability the company has to pay under the Taxes Ordinance 1997, Medical Services Tax Ordinance 2010 or subsidiary legislation made under the aforementioned Ordinances.

There is no repayment interest for refunds of excess WHT.

9. Retention of records

A licensee who makes a payment and/or applies WHT for a transaction in connection with activities authorised by the licensee's licence must make a record of the transaction and particulars of the person to whom it was made with. That record should be kept until the expiry of at least 6 years ending after the end of the calendar year in which the payment or deduction was made.

10. CT filing and payment dates

The FI operates an automatic pay and file without assessment CT system. 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 day following due date regardless of whether an assessment has been issued.

Companies are required to deliver a CT return and accounts (as well as various other documents) 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.

More detailed guides on CT requirements are available, see point 11.

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/

Any enquiries concerning FI taxation should be emailed to:

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

general@taxation.gov.fk for general tax matters

Instructions for making payments to the Falkland Islands Government (FIG) Taxation Office

Payment can be made directly into accounts held by FIG either at the Lloyds UK branch or the FI branch of Standard Chartered Bank.

Details for account held with the FI branch of Standard Chartered Bank

Account name Falkland Islands Government
 Account number 002003344000

Remittance advice for payments being made from outside FI

Payment can be made into the UK FIG bank account held with Lloyds Bank at the City Office Branch by using the following details:

Account Name Falkland Islands Government
 Account Number 15752368
 Sort Code 30-80-12
 SWIFT / BIC LOYDGB21F09
 IBAN GB39 LOYD 3080 1215 7523 68
 Bank Address PO Box 1000, Andover, BX1 1LT

Payments can also be made by overseas transfer using SWIFT into FIG's account held with the FI branch of Standard Chartered Bank, however there is a charge from the London end and there may be further charges from other banks involved in the transfer. These charges are out of FIG's control and it is the taxpayer's responsibility to ensure all charges are paid by them so that the actual amount due is received by the Falkland Islands Government. Contact our FIGTO if you would like further details on making payment by SWIFT.

Reference number

This will depend on what you are paying:

- Schedule 6 withholding tax, use "Sch 6 WHT"
- Corporation tax, use your FI Company Reference Number (CRN) and "CT". *For example, 270135 CT*
- POAT, use your ERN and "POAT". *For example, 10102030 POAT.*

If you are paying interest and/or penalties, use the reference that it is linked to. *For example, use your CRN for paying interest on Corporation Tax.*

Questions

If you have any questions regarding payments please contact the FIG Taxation Office on (+500) 28470 or general@taxation.gov.fk