ESC 17 Taxation of Share Incentive Plans

The Taxes Ordinance 1997 (as amended) charges to tax any benefits provided by employers to their employees. Benefits may be in cash or otherwise. Some benefits which are not in cash have prescribed values, but where they do not, then the Open Market Value of the non cash benefit is charged.

A growing practice in companies, particularly those with overseas parent companies, is to reward employees by allocating them shares in the company through share option plans or Share Incentive Plans (SIPs). ESC 14 is in place to deal with share option plans through Save As You Earn (SAYE) schemes and this ESC will address the issue of SIPs. The key difference between an SAYE plan and a SIP is that, under a SIP, the employees are allocated shares upfront rather than just acquiring share options which they may at some point in the future exercise to acquire shares. The shares will attract a benefit on transfer to the employee as it will be deemed to be a gain from employment. This benefit is a taxable benefit and is taxed when the shares are transferred.

The Falkland Islands Tax Office has not taxed the benefit from SIPs which have received Approval from HM Revenue & Customs or Inland Revenue (HMRC) in the UK and this Extra Statutory Concession formalises the current position.

Thus for SIPs which have received HMRC Approval in the UK the FI Tax Office will not seek to charge a benefit where no charge would have been made in the UK.

Where a local employee in a SIP would have been charged to tax under the UK Approval rules (because they did not qualify for exemption under the Approval rules) Payment on Account of Tax (POAT) should still be deducted in the Falkland Islands.

The tax office will also attempt to give FI Approval for a SIP which has all the characteristics of a scheme which would receive approval under HMRC rules, but which has not been operated in the UK. The rules for Approval of SIPs in the UK are at Schedule 2 of Income Tax (Earnings and Pensions) Act 2003.

Any dividends from shares will be subject to existing legislation, i.e. if a resident of the Falkland Islands receives a dividend from a UK company the full amount is taxable, however if proof of tax paid is provided then a tax credit of this amount will be given.

The position for any other share incentive plans remains that the benefit is charged to tax when the option is exercised, usually by the share transfer to the employee.

(For clarification employee contributions to a SIP are exempt from POAT, Income Tax and MST if they meet the criteria of the plan under HMRC rules for approval in Schedule 2 of the Income Tax (Earnings and Pensions) Act 2003.)