



FALKLAND ISLANDS GOVERNMENT TAXATION OFFICE



Guide to sections 22 and 22A Taxes Ordinance 1997 – provision of workers by agencies and intermediaries.

1. INTRODUCTION

1.1 This is an introductory guide to sections 22 and 22A Taxes Ordinance 1997. These provisions relate to off-payroll workers; **they apply to both public sector and private sector workers.**

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.

Readers familiar with the UK tax system may notice some similarities in FI legislation. However the UK legislation in this area of taxation has evolved considerably in the past twenty years and there are now major differences of substance. It is recommended not to rely on UK experience in any area without checking the relevant FI legislation.

Further, there is an increasing body of case law in the UK on this area of taxation. While FIGTO takes guidance from these cases, they are of limited assistance given the divergence of the law between the two jurisdictions.

2. Workers supplied by agencies

2.1 The provisions of section 22 are aimed at those individuals whose services are supplied to an end user (“client”) via or through a third party, most notably an employment agency. They ensure that those individuals who would otherwise be considered employees of the client, but for their contractual arrangements, are treated as employees for tax purposes.

2.2 The provisions apply where **all** three of the following conditions are met.

2.3 Firstly, the individual worker must provide personal services to the client and, in providing those personal services, is subject to supervision, direction or control as to how those services are provided. A worker provides personal services to the client where they are under an obligation to provide those services. Where the worker has a largely unfettered right to provide a substitute, this would be an indicator that the individual does not have an obligation to provide personal services.

2.4 Secondly, the worker is supplied to the client by or through a third party. The worker must have an obligation to render the services under a contract between themselves and the third party.

2.5 Thirdly, the amount paid by the third party to the worker under their contract must not otherwise be chargeable to income tax as employment income, apart from this section.

2.6 Where the three conditions set out above are met, the services which the worker renders to the client are treated as though they are performed under a contract of employment, and are treated for tax purposes as such.

2.7 This means that for Payment on Account of Tax (POAT) purposes, the client is required to make POAT deductions on any remuneration that the client pays for the services. In practice, FIGTO accepts that this does not include the profit-element which is retained by the third party.

3. Workers supplied by intermediaries

3.1 The provisions of section 22A are aimed at those individuals who supply their services to a client through an intermediary, for instance a personal services company (PSC). The legislation envisages a hypothetical contract between the client and the individual; if this hypothetical contract would be one of employment, then the payments made by the client to the intermediary are treated as payments of remuneration from an employment that the worker holds with the client.

3.2 Section 22A applies where **all** four of the following conditions apply.

3.3 Firstly, an individual must provide personal services to a client for the purpose of the client's business*, and such services arise from arrangements involving an intermediary. As above, a worker provides personal services to the client where they are under an obligation to provide those services. Where the worker has a largely unfettered right to provide a substitute, this would be an indicator that the individual does not have an obligation to provide personal services.

***For the purposes of this section, the term "business" is broadly defined as any activity carried on by any public or private sector body.**

3.4 Secondly, the worker is not an employee of the client but the circumstances are such that if the services were provided under a direct contract between the worker and the client then this would be one of employment. This is the hypothetical contract which needs to be imputed and considered as to whether it would be one of employment.

3.5 Thirdly, the individual worker must receive or have the right to receive a payment or benefit from the intermediary that is not chargeable to income tax as earned income (for instance a shareholder of a PSC would be entitled to dividends).

3.6 Fourthly, the client makes a payment to the intermediary in respect of the services provided by the worker. These payments are known as the "quasi-remuneration".

3.7 Where these four conditions are met, the quasi-remuneration is deemed to be a payment of remuneration made by the client to the worker.

3.8 For POAT purposes the client is deemed to be the employer of the worker and the worker is the employee. Payments made by the client to the intermediary are therefore subject to POAT deductions as normal.

4. Exemptions from sections 22 and 22A

4.1 Sections 22 and 22A do not apply to certain musical and artistic performers, amongst others.

4.2 Further, these provisions do not apply if the worker performs the services in their own home.

If the services are not performed in premises controlled or managed by the client, nor premises which it is necessary for the worker to be present at to perform the services, the provisions will not apply. For instance, if an IT contractor performs their duties in a local bar or café, these provisions will also not apply.

5. Falkland Islands – United Kingdom Double Taxation Relief Arrangement

5.1 Where the worker is tax-resident in the UK, the appropriate paragraphs of the Double Taxation Relief Arrangement need to be considered.

6. Notification

6.1 Where a client begins to engage workers supplied by agencies or intermediaries, the Taxation Office requires notification via a prescribed form. These forms can be found in the annual Employers' pack.

6.2 The Employers' annual return also requires details of payments made which fall within the sections 22 and 22A legislation.

7. Further Information

7.1 The Taxation Office has a number of guides available – including one for employers - which can be sent out on request. Please see section below for contact details.

8. Contact details

Falkland Islands Government Taxation Office

St Mary's Walk

Stanley

Falkland Islands

FIQQ 1ZZ

Website: <http://www.fig.gov.fk/treasury/taxation>

Telephone: (00500) 28470, Email: general@taxation.gov.fk