



**Taxation Office
Falkland Islands Government**

Public Consultation Paper

**Draft legislation and guidance
for
Schedule 6 withholding tax on
oil contractor companies**

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1 - Introduction and executive summary

Essential tax collection provisions exist in Schedule 6 to the Taxes Ordinance 1997 (TO1997) which are relevant to oil licensees and non-resident oil contractors engaged to work in the Falkland Islands (FI) oil industry. However, the operation of Schedule 6 TO1997 is currently administratively burdensome for the Falkland Islands Government Taxation Office (FIGTO), and collection of taxes due is often delayed by an unacceptably long period.

Improvements to the operation of Schedule 6 TO1997 are needed to reduce the time FIGTO spends administering the system and hasten the recovery of taxes due and payable by non-resident oil contractors performing activities within the FI and its continental shelf.

FIGTO are working on administrative changes to improve the functionality of Schedule 6 TO1997. In addition to these administrative improvements, significant advantages will be gained from introducing a statutory withholding tax to collect monies in advance of the submission of a tax return and normal due date for payment of tax.

A statutory withholding tax will reduce the residual liability imposed on an oil licensee by Schedule 6 TO1997. Only where the withholding is less than the tax due on the taxable profits arising from the relevant contract, and the contractor fails to pay the balance, will the oil licensee be served a 'Recovery Notice' in respect of the unpaid tax.

Following a public consultation in early 2020, policy approval was given for a new withholding tax regime. This additional consultation seeks to engage with stakeholders to gather views on the draft legislation and guidance for the new regime in a structured and open manner. Stakeholders' views will be used by FIG to identify any issues with the drafts and carry out further technical work if needed to ensure the enacted legislation is clear and effective.

We hope you find this consultation process positive and productive, and that the responses we receive will help us and Industry to improve the operation of Schedule 6 TO1997.

Roger Spink MLA
Portfolio Holder, Treasury & Tax

Timothy Waggott
Financial Secretary & Commissioner of Taxation

2 - Structure and design of the consultation

The issuing of a consultation on the draft legislation and guidance was approved by the Executive Council of the FIG on 26th August 2020. It will be issued on FIGTO's webpage and for distribution through stakeholder groups based in FI and internationally through the FI Petroleum Licensees Association (FIPLA) and its member companies.

We thank both the FI Chamber of Commerce and FIPLA for their support in communicating this consultation to their members, and for the collation of their members' views on the consultation.

The consultation is open for a period of four weeks, concluding on Tuesday 29th June 2021.

Ways to respond:

Email consultations@taxation.gov.fk

Write to Schedule 6 WHT Consultation
Falkland Islands Government Taxation Office
St Mary's Walk
Stanley
Falkland Islands
FIQQ 1ZZ

Questions on this consultation can be sent to the above email contact or by calling (+500) 28470 during public office hours (Monday to Friday, 9am to 12noon).

3(a) - An overview of the current Schedule 6 TO1997 regime

The current domestic tax legislation, comprised of TO1997 and subsidiary legislation, can be found on the Statute Law Database at www.legislation.gov.fk

Currently there is harmonisation of the rates of Income Tax and Corporation Tax (CT), at 21% and 26% respectively. There is a Payment on Account of Taxation (POAT) regime which collects the majority of Income Tax at source for employees, and a simple residency test for individuals based on days physically present within a tax year. A pay and file regime exists for companies. CT is due 8 months plus a day after the end of the accounting period and the CT return and accounts are required to be filed 9 months after the end of the period of account.

Schedule 6 TO1997 makes provision with respect to the recovery of tax assessed on persons (including companies) not resident in the FI on profits or gains arising or accruing out of or in connection with hydrocarbon exploration or exploitation activities or rights. It has effect by virtue of section 185 of TO1997.

Provisions like those in Schedule 6 TO1997 have been a longstanding feature of the FI Taxes Ordinances, and formed part of the 1994 Ordinance as Schedule 2A in relation to CT. Schedule 6 TO1997 extended the scope of the prior legislation to cover the unpaid POAT liability of the employees engaged to work in FI in connection with a licensee's activities.

Non-resident contractors

Schedule 6 TO1997 works by requiring an oil licensee, upon receipt of a notice from FIGTO, to provide a return to FIGTO containing particulars of the oil licensee's transactions with non-resident supply chain contractors, so that FIGTO knows who is operating in its jurisdiction and can engage with them directly, reminding them of their filing and payment obligations under FI legislation.

For non-resident taxpayers who fail to engage with FIGTO and do not file accordingly, or who file but fail to remit the monies due within 30 days after they became due, Schedule 6 TO1997 allows FIGTO to refer the unpaid liability plus interest to the oil licensee and demand payment from the oil licensee as if it was in fact their liability.

If a 'Recovery Notice' is issued to an oil licensee under Schedule 6 TO1997, the oil licensee has 30 days to make payment of the unpaid tax specified in the notice, otherwise they risk having their licence revoked.

These provisions are important to the FIG Exchequer because of the weakness in FIGTO's ability to otherwise identify non-resident taxpayers who are taxable under TO1997, estimate their liability once they have been identified, and ensure payment is made.

Schedule 6 TO1997 is also intended to encourage oil licensees to try and procure that their contractors pay their liabilities promptly. It does so by making an oil licensee the taxpayer of last resort in the event of non-compliance by one of its non-resident contractors.

Payments of contractors' taxes are not a deductible expense for an oil licensee against its CT liability in any circumstances (whether the relevant contractor is able to pay but unwilling, or whether they simply cannot pay, which may be the case if the contractor is insolvent).

Schedule 6 TO1997 represents a 'fiscal risk' for an oil licensee because they could be asked to pay the FI tax assessment of non-resident contractors with whom they are not connected. Such fiscal risk is intended to incentivise an oil licensee to select its contractors with due care. This reflects the fact that the oil licensee is expected to know the market well, and may have worked with the same oilfield service providers

previously in other regions in which it operates, such that it is able to leverage existing business relationships to the benefit of its FI activities.

POAT obligations

Schedule 6 TO1997 extended the scope of the prior legislation to cover the unpaid POAT liability of the employees engaged to work in FI in connection with the licensee's activities. Paragraph 2(1)(b) requires an oil licensee, upon receipt of a notice from FIGTO, to provide a return to FIGTO containing particulars of the emoluments and other payments made to persons (by employers) carrying out activities within the licensee's area.

For an employer identified by a licensee (in response to a notice from FIGTO) which has failed to correctly pay amounts to FIGTO as required by the POAT regulations, Schedule 6 TO1997 allows FIGTO to refer the unpaid liability to the oil licensee and demand payment from the oil licensee as if it was in fact their liability.

If a 'Recovery Notice' is issued to an oil licensee under Schedule 6 TO1997, the oil licensee has 30 days to make payment of the unpaid tax specified in the notice, otherwise it risks forfeiting its licence.

3(b) - FIG's approach to tax

Given the size of the business community in FI and the resources available to FIGTO, FIG aspires to have a simple tax regime which is (within reason) easy to understand and comply with from a taxpayer's perspective but one that offers FIG enough protections in areas of high importance and risk.

4(a) – Introduction of a statutory withholding tax on oil contractor companies, whether FI resident or not

In order to reduce the reliance placed on the Schedule 6 TO1997 regime for the recovery of taxes due and payable by non-resident oil contractors, a public consultation took place 31st January to 13th March 2020 on the introduction of a withholding tax regime. A summary of responses and recommendations were considered by Executive Council on 26th August 2020, this is a public paper (no. 113/20) and is available from the Office of the Legislative Assembly, Gilbert House, Stanley, or at <http://www.fig.gov.fk/assembly>. It was agreed to introduce a 3% withholding tax regime to capture a proportion of the consideration paid to oil contractor companies, whether resident or not, at the point that they are paid by the licensee.

The application of withholding tax cascading down the supply chain was considered however through the legislation drafting process it was identified that this could allow abuse within the supply chain. For example, if a subcontractor said it had deducted withholding tax but did not pay this to FIGTO, the supplier would have no right to credit from FIG as the withholding tax had not been paid. A solution is to only apply the withholding tax to the top line of the supply chain i.e. between the licensee and their contractor. It is recognised there will be a residual risk of non-compliance by companies in the supply chain and exposure to the licensee, however it makes the withholding tax regime simpler as well as not creating a potentially abusive practice. Restricting the withholding to this top level would still achieve the objective of the withholding tax at licensee level by effectively covering the majority of the value.

Such a withholding is to be written into the tax regime via an amendment Ordinance (a 'statutory' withholding regime). It will not replace the Schedule 6 TO1997 regime, which will remain in place because any withholding tax collected may not fully cover the relevant company's tax liabilities.

The following example illustrates how this model will work: a licensee contracts with a company for goods or services that are worth £100,000. At the point the company requires payment, the consideration actually paid to the company is the net of withholding amount, in this example £97,000. The £3,000 held back by the licensee is paid over to FIGTO and kept on account for the company until it files its CT return and their actual liability is determined through assessment.

If the statutory withholding collects more than the tax liability eventually due, the company would be entitled to claim a refund for the overpayment. This would be the case if, for example, the company's final assessed tax liability for the relevant period was £2,000; the company would be entitled to claim a refund of £1,000 (equal to the £3,000 withholding less the £2,000 tax actually due and payable). In these circumstances, FIGTO would expect the company to file a return as soon as possible on which they would show any overpayment.

Alternatively, if the company's tax liability when it submits its return and is subsequently assessed exceeds the statutory withholding, the company will be required to pay the residual liability. If the company is unwilling or unable to pay the residual liability, a 'Recovery Notice' may be issued under Schedule 6 TO1997 to recover the balance outstanding from the oil licensee. However, the outstanding balance for which the oil licensee is liable would be significantly less than if the statutory withholding regime did not apply. For example, if the company's final assessed tax liability for the relevant period was £5,000, there would be a residual tax liability of £2,000 (equal to £5,000 less the £3,000 withholding). Under Schedule 6 TO1997, an oil licensee could be liable for that residual liability. In the absence of the statutory withholding regime, the oil licensee could be liable for the entire £5,000.

4(b) – Draft legislation and guidance

Executive Council also agreed at its 26th August 2020 meeting that the draft legislation and guidance for the new withholding tax regime should be issued for public consultation. These documents are at Appendices 1 to 6. The policies that have already been agreed are:

- the introduction of a withholding tax regime to come into force from 1st January 2022;
- the rate of withholding is 3%;
- it will not apply for POAT purposes however any excess withholding tax will be set off against any other tax liabilities of the company, including POAT, before making any repayment;
- it will apply to all consideration paid, regardless of whether it is paid in cash, non-cash or a mixture of both;
- it will apply to all payments including reimbursements and third party charges (these can be addressed by the company through their filing with FIGTO);
- if an invoice is payable in a currency other than sterling, the withholding is to be converted to sterling at the rate on the invoice's payment due date;
- it will apply to all relevant companies with a taxable presence within FI, whether resident or not;
- it does not need to be applied to companies known not to have a FI taxable presence;
- there will be a withholding tax exemption for companies who have a history of good FI tax compliance and have received approval via application for the exemption;
- there will be a refund claim process and repayment interest will not apply;
- withholding tax will be due as a total payment on/before 30 days from relevant quarter end; and

- interest will accrue on late payment of withholding tax.

Other changes to note on the Schedule 6 regime;

- returns will become an automatic filing process and no longer require issuing by notice from the Commissioner;
- electronic submission of returns will be allowed;
- quarterly returns will be due on/before 30 days from end of relevant quarter end (in line with withholding tax payment due date);
- increase in penalties for late filing;
- recovery notices can also apply to debts of FI resident persons (including companies).

The draft legislation and guidance has now been produced for these agreed policies. FIG welcomes feedback on these documents and asks that the following points be considered when reading through them:

- Does it address all the agreed policy points? Is there anything not covered?
- Is it clear and understandable?
- Are there any points in the guidance that have not been explained or could be explained better?
- Are the forms prescribed, self-explanatory and easy to complete?
- Do you foresee any complications?

5 - Conclusions and next steps

In launching this public consultation, FIG hopes that a thoughtful and considered engagement with stakeholders can take place in a way that delivers clear and understandable legislation on issues of material importance to the FIG Exchequer, the FI economy and the oil industry in the region. Transparency and openness are key features of a modern democracy and public administration. Therefore it is useful to set out next steps for after the closing of the consultation.

All responses received on or before 29th June 2021 will be thoroughly considered by FIG Officers, and summarised for Members of the Legislative Assembly. Based on decisions made by Executive Council and the Assembly, it is planned that any amendments to the draft legislative and guidance for the introduction of a statutory withholding tax will be developed during 2021 for enactment and implementation.

Taxes (Amendment) Bill 2021

(ORDINANCE No. OF 2021)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Amendment of Taxes Ordinance
4. Section 185 replaced – Recovery of tax in respect of profits or gains on offshore petroleum activities, etc
5. Schedule 6 amended – Territorial Extension of Charge to Tax: Supplementary Provisions

Taxes (Amendment) Bill 2021

(assented to: 2021)
(commencement: 1 January 2022)
(published: 2021)

A BILL

for

AN ORDINANCE

To amend the Taxes Ordinance.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Taxes (Amendment) Ordinance 2021.

2. Commencement

This Ordinance comes into force on 1 January 2022.

3. Amendment of Taxes Ordinance

This Ordinance amends the Taxes Ordinance 1997.

4. Section 185 replaced – Recovery of tax in respect of profits or gains on offshore petroleum activities, etc

Section 185 of the Taxes Ordinance is repealed and replaced with the following —

“185. Recovery of tax in respect of petroleum activities, etc.

Schedule 6, which makes provision with respect to information to be obtained from licensees, deductions of withholding tax and the recovery of unpaid tax in connection with exploration or exploitation activities or rights, has effect.”

5. Schedule 6 amended – Territorial Extension of Charge to Tax: Supplementary Provisions

This section amends Schedule 6 to the Taxes Ordinance as follows —

(a) the heading is omitted and replaced with —

“**SUPPLEMENTARY PROVISIONS IN RESPECT OF LICENSEE**”;

(b) paragraph 2 is repealed and replaced with —

“2 Withholding tax and power of Commissioner to obtain information from licensees

(1) Subject to paragraph 2B, a licensee, when making payment to a company for transactions in connection with activities authorised by a licence as a result of which the company is or might be liable to tax, must —

- (a) deduct 3 percent of the total value of the invoice (“**withholding tax**”) regardless of the method of payment; and
 - (b) make a record of the deductions of withholding tax.
- (2) A licensee must make a record of all transactions in connection with activities authorised by a licence as a result of which a person is or might be liable to tax and of the particulars of the person in respect of whom the transaction was made.
- (3) A licensee must keep the records under subparagraphs (1) and (2) until the expiry of a period ending at least six years after the end of the calendar year in which the transaction or deduction was made.
- (4) A licensee must submit to the Commissioner, a return in such form as the Commissioner may prescribe, for the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December on or before 30 days from the end of each period.
- (5) The return under subparagraph (4) must —
- (a) specify particulars of the transactions under subparagraphs (1) and (2);
 - (b) specify particulars of emoluments or other payments paid or payable in respect of duties or services performed in an area in which those activities may be carried on under the licence and the persons to whom they were paid or are payable;
 - (c) specify the total amount of withholding tax deducted during that period;
 - (d) be submitted even if there are no transactions or particulars to report for that period.
- (6) A licensee must take all reasonable steps to obtain the information necessary to enable them to comply with subparagraphs (5)(a) and (5)(b).
- (7) Withholding tax under subparagraph (1)(a) —
- (a) is not corporation tax, but is on account of the liability to corporation tax whether determined or yet to be determined, of the company in respect of which the deduction is made; and
 - (b) may be applied at any time by the Commissioner in payment or reduction of that company’s liability to tax in respect of the accounting period in which the deduction was made or the immediately following period or any earlier period.
- (8) A licensee must remit to the Commissioner the amount deducted during the period for which a return is submitted at the same time that the return is submitted under subparagraph (4).
- (9) Interest is due on any withholding tax that remains unremitted after the date on which it is payable under subparagraph (8) at the rate of 3 per cent per annum over base lending rate.
- (10) The Commissioner may require —
- (a) a return under subparagraph (4) to be submitted by transmitting it electronically to an address provided by the Commissioner for the purpose; and
 - (b) a licensee to submit to the Commissioner the name of a person authorised to send returns electronically.”;

(c) new paragraphs 2A, 2B and 2C inserted after paragraph 2 —

“2A Penalties

- (1) A licensee who, without reasonable excuse fails to comply with the requirements of subparagraphs 2(2), 2(3) or 2(4), commits an offence and is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.
- (2) If a licensee fails to submit a return under subparagraph 2(4) with information required under subparagraph 2(5) within the time specified, that licensee is liable to pay —
 - (a) a penalty of £1,000; and
 - (b) an additional penalty of £1,000 in respect of each successive period of 15 days that elapse before the information is submitted.
- (3) Where a licensee fails to submit a return under subparagraph 2(4) with information required under paragraph 2(5) within the time specified —
 - (a) for a second time, the penalties under subparagraphs (2)(a) and (2)(b) increase to £2,000; and
 - (b) for a third and any subsequent times after that, the penalties under subparagraphs (2)(a) and (2)(b) increase to £3,000.
- (4) A penalty under subparagraphs (2) and (3) —
 - (a) is incurred whether or not the licensee is charged with an offence under subparagraph (1); and
 - (b) attracts the provisions of Schedule 4 and any other provision of this Ordinance about penalties.

2B Exemption from withholding tax

- (1) A company may apply to the Commissioner, in such form as the Commissioner may prescribe for an exemption from a deduction of withholding tax under subparagraph 2(1)(a).
- (2) To qualify for an exemption under subparagraph (1), the company must have three consecutive accounting periods of good compliance with the requirements under this Ordinance and subsidiary legislation made under it and under the Medical Services Tax Ordinance 2010 and subsidiary legislation made under it.
- (3) The Commissioner assesses good compliance by considering the company’s record of filing returns, accuracy of those returns and payment of tax by due date.
- (4) The Commissioner must maintain an up to date list of the companies that have been granted an exemption under this paragraph showing the effective date of the exemption and the list must be available from the Falkland Islands Government Taxation Office or their website.
- (5) An exemption becomes effective on the date that the Commissioner adds a company to the list under subparagraph (4) and an exemption is lost with effect from the date on which a company is removed under subparagraph (6), from the list.
- (6) A company loses an exemption under this paragraph on the first instance that it fails without reasonable excuse to comply with a requirement under this Ordinance and subsidiary legislation made under it and under the Medical Services Tax Ordinance 2010

and subsidiary legislation made under it, and it must be removed from the list maintained under subparagraph (4).

(7) Withholding tax may not be deducted from a company for payment for goods or services that are wholly provided or wholly performed outside the Falkland Islands and any designated area.

(8) Where the goods or services were partially provided or partially performed in the Falkland Islands or in any designated area, the licensee must deduct withholding tax on a proportionate amount of the payment by making a fair and reasonable apportionment.

2C Withholding tax certificate, refund, currency, etc

(1) A licensee must issue a withholding tax certificate in such form as the Commissioner may prescribe, to the company from which withholding tax is deducted under paragraph 2(1)(a) with the following information —

- (a) amount and date withheld; and
- (b) exchange rate used if the invoice is not denominated in sterling.

(2) If an invoice is denominated in currency other than sterling, the licensee must translate the invoice on the due date into sterling by using the Bank of England daily spot rate.

(3) If the withholding tax deducted under paragraph 2(1)(a) exceeds the company's tax liability or if it is deducted from a company which is not liable for tax in the Falkland Islands, that company may claim a refund on such form as the Commissioner may prescribe.

(4) No interest accrues to the amount to be refunded under subparagraph (3).

(5) If a company entitled to a refund under subparagraph (3) has any amount remaining unpaid under this Ordinance or subsidiary legislation made under it or under the Medical Services Tax Ordinance 2010 or subsidiary legislation made under it and that amount has become due, the Commissioner may set off the refund against that unpaid amount that has become due.”;

(d) paragraph 3 is amended

(i) in subparagraph (1) omit the words “an amount of tax which has been assessed on a person not resident in the Falkland Islands” and replace them with “an amount of tax which has been assessed on a person”; and

(ii) omit subparagraph (2) and replace it with —

“(2) An amount of unpaid tax may not be included in a notice under this paragraph if the tax was assessed in respect of the emoluments of any employment.”;

(e) in paragraph 4 omit the words “not resident in the Falkland Islands”; and

(f) in paragraph 6, subparagraph (7) omit the words “or paragraph 7”.

OBJECTS AND REASONS

This Ordinance amends the Taxes Ordinance 1997 to make changes to Schedule 6. Section 185 which is the founding provision for Schedule 6 is replaced.

Schedule 6 deals with recovery of tax that is due for activities related to a petroleum licence. The amendment is intended to ease the administration for the recovery of tax from a licensee. Currently the Commissioner issues a notice requiring a licensee to supply to the tax office details of persons whom the licensee has paid, amount paid and the activities in respect of which payment was made. It is then up to the Commissioner to follow up with the companies that have been paid to settle their corporate tax obligations. The proposed change is for the licensee carrying on an activity under the licence to withhold 3% (withholding tax) when making payment to a company for transactions in connection with activities authorised by the licence as a result of which the company is or might be liable for tax. The licensee must then submit quarterly returns with information required under paragraph 2 of Schedule 6. The 3% deduction is not corporation tax but an amount on account of corporation tax. The Commissioner may exempt a company that meets criteria set out in paragraph 2B of Schedule 6 from a deduction of withholding tax.

In more detail the individual clauses of the Bill provide as follows:

Clauses 1, 2 and 3 provide for preliminary matters.

Clause 4 replaces section 185. The effect of the amendment is that Schedule 6 will apply to residents as well. This provision has been updated to reflect that Schedule 6 also applies to recovery of unpaid deductions.

Clause 5 provides for several amendments to Schedule 6 as follows:

(a) Paragraph 2 is replaced.

The new paragraph 2 provides that a licensee must deduct 3% when making payment to a company for any transactions in connection with activities authorised by a licence as a result of which the company being paid is or might be liable to tax in the Falkland Islands. A record of the transactions and particulars of the transaction or deduction must be kept and retained for at least six years.

A licensee must submit a quarterly return to the Commissioner for the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December. A return must specify information required under subparagraph 5. The total amount of withholding tax deducted during that period must be paid to the Commissioner at the same time that a return is submitted. A nil return must be submitted where there was no activity that quarter. Interest is payable on any withholding tax that is not paid to the Commissioner within the time specified in paragraph 2(4).

A deduction under paragraph 2 is not corporate tax but it is on account of the liability to corporation tax. The amount may be applied at any time by the Commissioner in payment or reduction of the company's liability to tax.

(b) New paragraphs 2A, 2B and 2C are inserted in Schedule 6.

The new paragraph 2A provides for increases in penalties currently in 2(4), (5) and (6). Failure to comply with paragraph 2(2), 2(3) or 2(4) attracts a penalty not exceeding the maximum of level 7 on the standard scale. Further a licensee who fails to submit a return within the prescribed time is liable to pay £1,000 (up from the current £250) and for each period of 15 days that the return remains outstanding, another £1,000. The penalties increase to £2,000 and £3,000 respectively for a second, third and further transgressions.

The new paragraph 2B provides for exemption from withholding tax deductions. The Commissioner may exempt certain companies from the 3% deduction. A deduction under paragraph 2(1) will not be made from a company that has been granted an exemption. An exemption may be granted to a company that has good tax compliance evidenced by submission of returns and payment of tax promptly. A company loses an exemption on the first instance that it fails to comply with the Ordinance or the Medical Services Tax Ordinance 2010.

The proposed paragraph 2C provides for a withholding tax certificate to be issued by the licensee, refunds and conversion of currencies. Where withholding tax deducted exceeds the company's tax liability, a refund is payable. No interest accrues on the excess amount. The Commissioner is allowed to settle from the refund other tax liabilities that a company may have under the Taxes or Medical Services Tax Ordinances that are due and remain unpaid.

(c) Paragraphs 3, 4 and 6 are amended.

The amendment to paragraphs 3 and 4 removes reference to "person not resident in the Falkland Islands" hence extending the recovery of unpaid tax to persons resident in the Falkland Islands. Amendment to paragraph 6 is a belated consequential amendment to remove "or paragraph 7" in subparagraph 7. Paragraph 7 was revoked by an amendment in 2015.

Appendix 2



Falkland Islands Government Taxation Office

Guide on Schedule 6 Withholding Tax (WHT)

1. Introduction

Following consultation with industry in early 2020, a Schedule 6 WHT is being introduced with effect from 1 January 2022 (*for the purposes of this draft guide it should be noted this policy has received approval but has not yet been legislated*).

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

3% WHT should be applied to the total gross amount of the invoice due for payment.

4. Who does WHT apply to?

WHT applies to companies, whether Falkland Island (FI) resident or not, when being paid for transactions 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, see points 5.1 and 5.2 for further details.

5. Who does WHT not apply to?

5.1 Companies who provide goods or services in connection with FI oil exploration or exploitation but have no FI presence

WHT is not required to be applied for payment of goods or services 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 by a non-FI company. The licensee does not need to apply WHT to that invoice.

5.2 WHT exemption

An exemption from WHT is available by application to all companies who have a history (3 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 will be maintained by FIGTO of companies who hold this exemption. This list will be available at (*FIGTO website*) 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 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.

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 for them to then arrange reimbursement to the company.

6. What does WHT apply to?

WHT should be applied to the total gross invoice 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).

7. 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 4).

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 'Withholding Tax 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 the 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*, 30th April 2022 is the payment and submission deadline for the quarter ending 31st March 2022. Completed returns can be submitted electronically to (*email to be confirmed*) or by post (see point 11 for address). Payment can be made directly into accounts held by Falkland Islands Government either at the Lloyds UK branch or the local branch of Standard Chartered Bank (*instructions to be included as an Appendix*).

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 31st 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 31st 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.

8.6 Further failure of compliance

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).

8.7 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.

8.8 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 shall be applied so that any such liability in respect of the earlier accounting period is wholly discharged before any WHT amounts are applied to any liabilities in respect of 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 there was no CT 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. Below is the allocation of payments that would occur in 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 8.9).

8.9 Refund applications

The 'Application for refund of Schedule 6 Withholding Tax' should be used 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.

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 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

Tax returns, forms and guides are available at <https://www.fig.gov.fk/taxation/>

Any enquiries concerning FI taxation should be sent to:

Taxation Office, St Mary's Walk, Stanley, Falkland Islands, FIQQ 1ZZ

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

Tel (+500) 28470

Email Schedule 6 matters *(to be confirmed)*

General tax matters general@taxation.gov.fk



Falkland Islands Government Taxation Office

Guide on exemption from Schedule 6 Withholding Tax (WHT)

1. Introduction

Following consultation with industry in early 2020, a Schedule 6 WHT is being introduced with effect from 1 January 2022 **(for the purposes of this draft guide it should be noted this policy has received approval but has not yet been legislated)**. Within the Schedule 6 WHT regime, there is an exemption at Paragraph 2B available for companies who have a history (3 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. 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 will be maintained by FIGTO of companies that have been granted this exemption. This list is publically available at *(FIGTO's website)* or 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. 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 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.

6. Processing and review of exemption applications

6.1 Processing times

Completed applications will be accepted by email or by post (see point 11 for details) and will be processed in order of receipt. Please allow 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 3 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 3 most recent APEs on which the due dates have been reached will be reviewed. In this example it will be APEs 30 June 2020, 2019 and 2018.

If the company has not yet been subject to FI tax requirements for 3 consecutive accounting periods, the company will need to wait until the FI tax requirements for the 3 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.

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.

- 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.
- Was there a filing extension agreed with FIGTO prior to the due date? If the agreed date is met, this would still be considered good compliance for the purposes of granting 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 2019, 2020 and 2021, a failure was identified in the earliest APE 30 June 2019. The company can wait and reapply after their APE 30 June 2022 when they believe they have had good compliance for that period and the immediately preceding two periods.

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.

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

Tax returns, forms and guides are available at <https://www.fig.gov.fk/taxation/>

Any enquiries concerning FI taxation should be sent to:

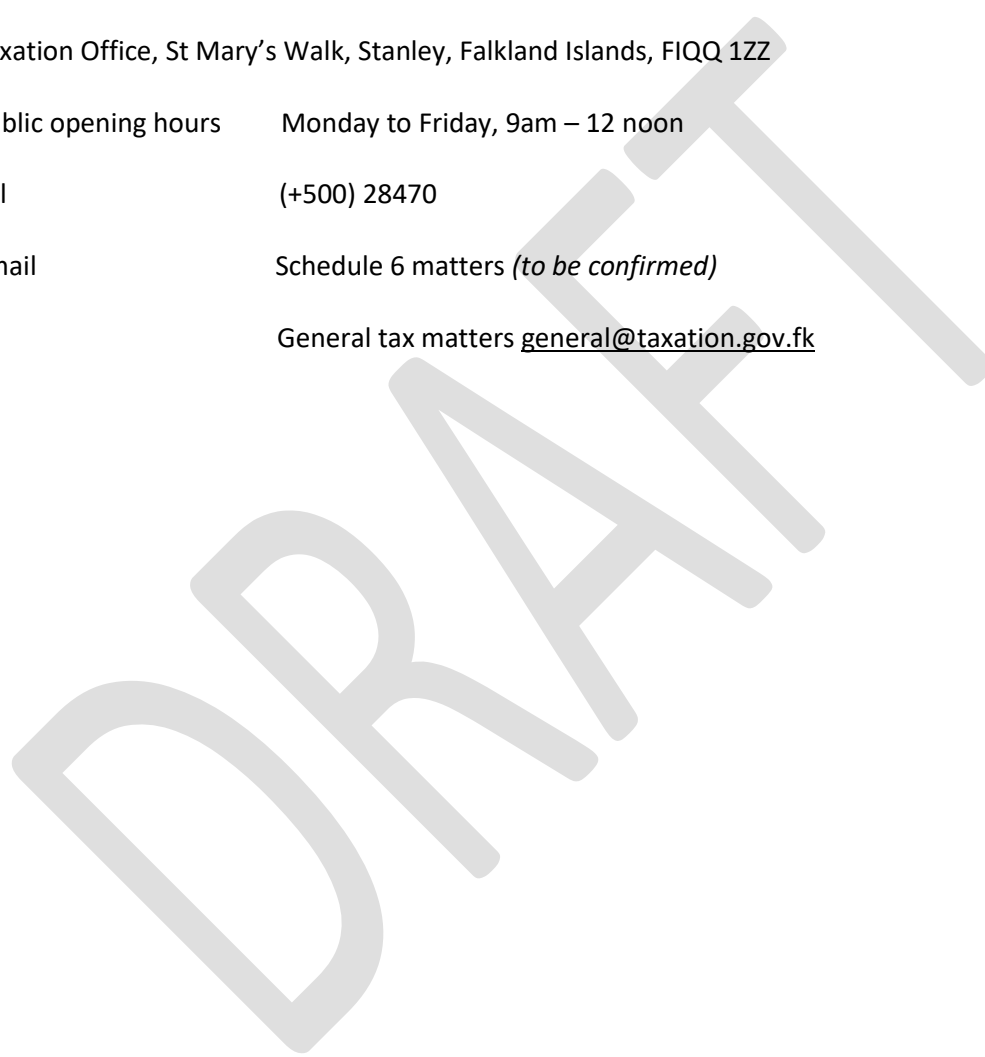
Taxation Office, St Mary's Walk, Stanley, Falkland Islands, FIQQ 1ZZ

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

Tel (+500) 28470

Email Schedule 6 matters *(to be confirmed)*

General tax matters general@taxation.gov.fk





Falkland Islands Government Taxation Office
St Mary's Walk, Stanley, Falkland Islands, FIQQ 1ZZ

Application for exemption from Schedule 6 Withholding Tax (WHT) deduction

Part 1 – Introduction

Before completing and submitting this form, please read the 'Guide on exemption from Schedule 6 Withholding Tax'. This guide and a general guide on Schedule 6 WHT are available at (*FIGTO website*) or from the Falkland Islands Government Taxation Office (FIGTO).

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

Note:

- To qualify for an exemption, the company must have 3 consecutive accounting periods of good compliance with FI tax requirements.
- Applications are processed in order of receipt and other FIGTO workloads may affect processing times.
- An exemption is effective from the date the company appears on the publically available list maintained by FIGTO of companies holding a Schedule 6 WHT exemption.
- Until such time as an exemption has been granted, the company is still subject to WHT.
- If the exemption is granted, 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.
- A company loses its WHT exemption on the first instance it fails without reasonable excuse to comply with FI tax requirements, and will be removed from the list previously mentioned.
- All details requested on this form are required. FIGTO will advise if any further details are needed or otherwise confirm to the applicant if the exemption has been granted or refused.

Contact FIGTO (*email address to be confirmed*) or call (+500) 28470 if you have any queries on this application.

Part 2 – Details of applicant

Company name _____

Registered office address _____

FI tax references

Company Reference Number (CRN)

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Employer Reference Number (ERN)

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Details for authorised officer(s) FIGTO can contact directly regarding this application:

Full name _____

Position _____

Email _____

Part 3 – Declaration

By signing below I confirm the details on this application are correct and acknowledge that, if our application is approved, the company’s name will appear on the publically available list of companies with Schedule 6 WHT exemption and will be removed from that list if the exemption is cancelled.

Full name

Signature

Status (i.e. Company Director, Secretary, agent)

Date (DD/MM/YY)

Part 4 – Submission

The completed signed application form should be submitted to FIGTO (*email address to be confirmed*) or by post (see top of page one for the address). If submitted by email, the original application is still required by post for FIGTO records.

Office use only

Case officer _____

Date application received _____

Application approved Yes No

Date approved / refused _____

Date company notified _____

If approved, date added to public list _____

Withholding Tax (WHT) Certificate

Paragraph 2C(1), Schedule 6, Taxes Ordinance 1997 requires the licensee applying WHT under Paragraph 2(1)(a), to issue the company on which WHT has been applied with this certificate.

In accordance with Paragraph 2(1)(a), Schedule 6, Taxes Ordinance 1997 (*name and address of the licensee paying the invoice*)

has applied WHT to payment of the invoice(s) listed in the below table for goods/services provided by (*Company's name and address*)

in connection with activities authorised by the licence as a result of which the company is or might be liable to Falkland Islands tax.

Invoice(s) details (*all dates to be given in DD/MM/YY format*)

Date paid	Number	Due date	* Exchange rate used	Gross amount due (£)	3% WHT applied (£)	Net amount paid to the company (£)

* If the invoice is denominated in 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.

I confirm the above information is correct and has/will be reported to the Falkland Islands Government Taxation Office (FIGTO).

Full name

Signature

Status (i.e. Company Director, Secretary, agent)

Date (DD/MM/YY)

The Taxes Ordinance 1997, associated legislation and regulations are available at www.legislation.gov.fk
A guide on Schedule 6 WHT is available at (*FIGTO website*), or from FIGTO (*email address to be confirmed*) or call (+500) 28470.

Appendix 6



Falkland Islands Government Taxation Office
St Mary's Walk, Stanley, Falkland Islands, FIQQ 1ZZ

Application for refund of Schedule 6 Withholding Tax (WHT)

All details requested on this form are required to enable the Falkland Islands Government Taxation Office (FIGTO) to consider your application under Paragraph 2C(3), Schedule 6, Taxes Ordinance 1997.

Part 1 – Details of applicant

Company name _____

Registered office address _____

FI Company Reference Number (CRN) _____

Details for authorised officer(s) FIGTO can contact directly regarding this application

Full name _____

Position _____

Email _____

Part 2 – Details of refund

2.1 Basis on which the company is applying for the refund (tick whichever is applicable)

- The company is not FI resident and for the invoice(s) on which WHT was applied, all services/goods provided by the company were carried on outside FI and designated area. *(A copy of all relevant invoices, supporting evidence and full details to explain how the company meets this basis for refund should accompany this application.)*
- The company's FI activities meet paragraph 21(4), Double Taxation Relief Arrangement (UK) Order 1996. *(It may take 12 months since the last period of relevant FI activity for FIGTO to consider such applications. A copy of all relevant invoices, supporting evidence and full details to explain how the company meets this basis for refund should accompany this application.)*
- The WHT deducted exceeds the company's FI tax liability. *(The company will need to meet the standard corporation tax filing requirements before FIGTO can confirm any refund due. A completed Corporation Tax Return, accounts and tax computation for the relevant accounting period will be required. Submissions are reviewed and assessed in order of receipt.)*

2.2 Amount of WHT applied for refund GBP £ _____

2.3 Offset against other liabilities – in accordance with Paragraph 2C(5), Schedule 6 and Section 187A Taxes Ordinance 1997 (*not yet legislated*), refunds in respect of WHT or an overpayment of corporation tax 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.

2.4 Repayment interest – in accordance with Paragraph 2C(4), Schedule 6, Taxes Ordinance 1997, no interest accrues on the amount of refund claimed on this form.

Part 3 – Details for making payment of the refund claimed

Beneficiary's full name and address _____

Account number _____

Swift code

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IBAN _____

Bank's name and address _____

Part 4 – Declaration

I confirm the details on this application, accompanying documents and information are correct by signing below.

Full name Signature

Status (i.e. Company Director, Secretary, agent) Date (DD/MM/YY)

Part 5 – Submission

The completed signed application form, accompanying documents and information should be submitted to FIGTO (*email address to be confirmed*) or by post (see top of page one for the address). If submitted by email, the original application is still required by post for FIGTO records.

The same contact details should be used for any queries on this application or call (+500) 28470. The Taxes Ordinance 1997, associated legislation and regulations are available at www.legislation.gov.fk

A guide on Schedule 6 WHT is available at (*FIGTO website*) or from FIGTO.

Office use only Date application received _____ Case officer _____

Application approved Yes No Amount to be refunded £ _____

Date Treasury instructed to make payment _____