



FALKLAND ISLANDS GOVERNMENT TAXATION OFFICE

Employer Guide

1. Introduction

This guide is intended to assist employers in making them aware of their tax obligations. It has been written in general terms; it does not have any legal force or bind Falkland Islands 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

Tax returns and guides referred to in this guide are available online at <https://www.fig.gov.fk/treasury/index.php/taxation> or contact FIGTO (details at point 14) for copies.

2. General scope of the Payment on Account of Tax (POAT) system

POAT must be applied by all employers to *all* remuneration paid to employees or former employees (this includes directors). The only exceptions to this general rule are:

- Pensions or annuities
- Some payments to part time employees (broadly defined for a monthly paid employee as fewer than 60 hours/month and for a weekly paid, fewer than 15 hours in that week and fewer than 60 hours in the past 4 weeks. This covers *all* employment carried on by the individual concerned).

Example - Pat works 10 hours each week for Lady Ltd and 8 hours each week for Elizabeth Ltd. As her total hours each week exceed 15, both Lady Ltd and Elizabeth Ltd need to account for POAT on her salary.

It should be noted that non-resident employers are also within the scope of POAT as are non-resident employees. Employees working in connection with oil exploration and exploitation activities in a designated area are within the scope of POAT.

POAT is not tax in itself, but merely a payment on account. Once the individual concerned has submitted their Tax Return, an assessment will be issued to refund any excess POAT over their actual tax liability, or collect any further tax to pay over and above the POAT (note point 3.3 'Non-resident employees').

3. POAT deductions

Employers should normally use one of the tax tables provided to calculate the POAT deduction needed. Separate tables have been compiled for employees paid weekly and monthly. Alternatively employers may use the formula shown in Regulation 5, POAT (Employee's Deductions) Regulations 1997. Tax tables are included in the Employer Pack issued by FIGTO.

3.1 More than one source of remuneration (including directors)

If you are not the employee's main employer, you are required to deduct a straight 21% POAT from any monies you pay them.

3.2 Tax free salaries

Where an employee receives 'free of tax' remuneration, the employer is responsible for grossing up the net amount (see note below) before POAT is calculated. Please contact FIGTO for grossing up details.

Example – an employee receives net £4,000 for work in FI, the below calculations are based on 2023 rates of flat rate 21% POAT and 0% Employee MST (see point 5)

$$\begin{aligned} 4,000 \times 100 / 79 &= \text{£}5,063 \text{ Gross salary for a FI tax purposes} \\ 5,063 \text{ at } 21\% &= \text{£}1,063 \text{ POAT due} \end{aligned}$$

Note

Only allowable FI deductions should be taken into account for the purposes of arriving at the net amount for FI tax purposes e.g. UK gross £7,000 with UK payroll deductions of £2,300, the net amount for FI tax purposes to be used for the starting point of grossing up will be £7,000

3.3 Non-resident employees

FI tax residency is based on total physical presence in FI/FI waters during a FI tax year (1 Jan – 31 Dec). Individuals with a presence of less than 183 days in total are not resident for that tax year.

A flat rate POAT deduction of 21% for Income Tax should be made from this category's remuneration in respect of FI activities, including any wages during off-duty periods, holiday pay and bonuses.

All employees have the right to submit a tax return to receive an assessment. 31st December 2024 is the tax return submission deadline for an employee wishing to claim a repayment of excess taxes deducted from their 2023 employment income. There is also provision for FIGTO to issue the employee with a tax return where the POAT deduction is less than their tax liability for the relevant year.

On completion of a tax return, the employee is entitled to a proportion of Personal Allowance against their earnings (full annual rate £15,000 for Income Tax) based on the number of days present in FI/FI waters/designated area during the tax year. This allowance will reduce the amount of income on which tax is due and may therefore lead to a partial tax refund. However, it should be noted that for Income Tax, income above the allowance will be charged; first £12,000 at 21% and any balance at 26%. Therefore depending on income levels, the employee could have an additional tax liability if sufficient income becomes liable at the 26% rate.

Example - an employee present in FI a total of 126 days during the tax year 2023 and earned £50,000 from which £10,500 POAT was deducted. Compulsory Retirement Pension Contributions (RPCs) of £369 were also deducted (see point 12). The employee may decide to or FIGTO may require the employee to submit a 2023 tax return. Their tax liability is calculated as follows:

| | |
|--|--------------------|
| | <u>Income Tax</u> |
| Earnings liable to FI tax | 50,000 |
| Less relief for compulsory RPC's | (369) |
| Less Personal Allowance: for Income Tax 15,000 x 126/365 | <u>(5,178)</u> |
| Taxable Income | £44,453 |
| | |
| Income Tax liability | |
| (12,000 at 21% = 2,520) + (32,453 at 26% = 8,437.78) | 10,957.78 |
| Less deducted at source | <u>(10,500.00)</u> |
| Additional liability | £457.78 |

UK resident employees should note that any refund of POAT resulting from submission of a tax return may reduce the tax credit available to them under the Double Taxation Relief Arrangement between UK and FI. Whether credit is given in countries with whom FI do not hold a double taxation treaty is a matter for the domestic legislation in that country.

4. Payment and returns

Employer packs are issued by FIGTO normally in December prior to the year to which they relate. These packs are also issued when any new employer registers with FIGTO and/or on request. The pack contains a workbook that includes all the relevant forms for use during the year.

The employer must submit to FIGTO a POAT return (EMP-02) for each calendar month by the 14th of the following month together with payment for that month's POAT. Please contact FIGTO for details of how to make payments. If there is wages/salary but no POAT, a return is still required or if during the year at any time you do not have any employees a nil return needs to be submitted.

Failure to submit the form within the time period incurs a £50 penalty for each late return. A Tax Calendar is included in the Employer Pack issued by FIGTO to assist with meeting deadlines.

Late POAT payments accrue interest. In addition, failure to pay POAT due within the deadline can render the employer liable to a penalty equal to the amount due and paid late.

An annual return of POAT is also required and this in addition requires details of taxable benefits-in-kind (see point 8) to be entered onto a separate sheet. The annual returns are issued by FIGTO normally in December of the year to which the income relates and have to be submitted by the 2nd of February in the following year.

The monthly EMP-02 is an electronic form to be submitted by email to FIGTO taxreception@taxation.gov.fk in the Excel format. E-POAT instructions are included with the Employer Pack issued by FIGTO.

There is no legal obligation to complete the Benefits in Kind column or use this figure when calculating your employees monthly POAT. However, if you do include these figures when calculating the POAT due, your employee may get a more accurate POAT deduction on their earnings at the end of the year.

5. Medical Services Tax (MST)

There is an Employee MST deduction employers are required to apply to their employees' salary and an Employer MST which employers are required to pay on their employees' total gross salary including any benefits in kind.

Under the TO1997, Employers' MST payments are not an allowable expense in calculating net taxable profits.

All MST rates for 2023 are 0%.

6. New employee

An employer with an employee in FI or designated area must notify FIGTO on or before 14 days of the calendar month following the month in which the employee commenced employment or begins to work in FI or a designated area. Notification should be done by completing and submitting a 'Notification of New Employee' form (EMP-03) with the relevant monthly POAT return (see point 4). If the employee's Tax Identification Number (TIN) is unknown or not yet issued, leave the relevant section of the form blank and FIGTO will provide you with one.

If you are unsure whether the person is an employee or not, please contact FIGTO.

7. Employee ceasing employment

Within 7 days of the ending of an employee's contract of service, the employer must provide the employee and a copy to FIGTO, a completed Certificate of Tax Deducted (EMP-04). If the employee is leaving FI please ensure their outside FI contact details have been included on the certificate.

If the employee is still in your employment at 31st December 2023, a Certificate of Tax Deducted should be provided to the employee by 31st January 2024. In this case, a copy is not required by FIGTO as this information is collected via Employer Annual returns.

8. Benefits In Kind (BIK)

There is a separate guide available on BIKs. These are something that an employee, or any member of their family, may receive as a result of being in an employment, in addition to any remuneration paid to the employee by their employer.

Some benefits such as an expenses paid on the employee's behalf by their employer are taxable on the amount paid as gains or profits from employment. There are also prescribed benefits taxable under the Taxes (Benefits in Kind) Rules 2003, as being:

- Payment by an employer of or in respect of any travel expenses incurred by or in respect of an employee
- Use by an employee of a motor vehicle provided by the employer
- Provision by an employer of a loan to the employee
- Provision by an employer of any living accommodation, including board, heating and electricity, for the use of the employee

Under the current POAT system, that benefit is not taxed at source by their employer. However, so that the correct amount of benefit can be taxed, the employer is required to tell their employee and FIGTO of the actual amount of benefit received by the employee in the tax year. The employee should then enter those details on their Tax Return.

It is therefore important that the employer maintains accurate records throughout the year and completes the relevant forms to give the employee at the end of the tax year, or during the year if the employee leaves that employment before 31 December.

To assist with completion of records, FIGTO have available a monthly record and weekly/monthly BIK tables that employers may wish to use. These are included in the Employer Pack workbook FIGTO issue.

9. Hire of labour

Use of employment agencies and other similar concerns for the supply of labour may still result in the payment of POAT by them in respect of these workers. There is provision in the TO1997 to require someone who is not the employer of an employee – but for whom the employee works – to deduct POAT on that employee's earnings. This is activated by way of a direction by the Commissioner of Taxation to "the relevant person" (the end user of the labour) to deduct POAT if he considers that "the contractor" (the employment agency or similar concern) is unlikely to account directly for the POAT.

If an individual is engaged via an employment agency solely as the provision of labour then whoever engages the individual as the client and who controls his activities has responsibility as an employer for operating POAT.

FIGTO have a separate guide available on sections 22 (workers supplied by agencies) and 22A (workers supplied by intermediaries) TO1997.

Included in the annual returns issued to employers (see point 4) is a return for the reporting of payments made to employment agencies.

10. Retention of POAT records

Employers are required to retain POAT records and details of employees for 6 years after the end of the calendar year in which the deduction or payment on account was made.

11. Miscellaneous provisions

11.1 POAT must be applied where a payment of remuneration is made. Certain employers may need to heed the provisions of sections 84 to 86.

11.2 45 day exemption

In the case of an individual who during a 12 month period is present in FI/FI waters for less than 45 days, there is an exemption for employment income, directors' emoluments and any prescribed BIK other benefit chargeable to tax, in respect of any part of that period. However, this exemption does not apply for POAT purposes. Therefore POAT should still be applied from day 1, even if the employer/employee believes the 45 day exemption will be met. The employee can apply for a refund through submission of a tax return (see point 3.3).

11.3 UK/FI Double taxation agreement

There are provisions in the UK/FI double taxation agreement relating to employment income. This agreement overrides the domestic legislation of both territories and will be referred to in relevant cases.

12. Retirement Pension Contributions (RPCs)

Employers may have an obligation to pay an Employer's RPC and deduct an Employee RPC in respect of their employees' wages. Please contact the Pensions Office (see below) for details of RPC rules and rates.

Pensions Office, Treasury, Thatcher Drive, Stanley, Falkland Islands, FIQQ 1ZZ
Tel (+500) 28415, Email Pensionsclerk@sec.gov.fk or DAldridge@sec.gov.fk

13. Minimum Wage

The national minimum wage is the minimum pay per hour workers who have a contract with their employer (either verbal or in writing) are entitled to by law. The minimum wage increased to £7.73 from 1st January 2023.

The Minimum Wage Ordinance 2013 and associated legislation can be found online at www.legislation.gov.fk FIGTO have available Employer and Employee guides on Minimum Wage.

14. Contact points

Any enquiries concerning **POAT** and **Minimum Wage** should be sent to

Taxation Office, St Mary's Walk, Stanley, Falkland Islands, FIQQ 1ZZ
Tel (+500) 28470, Email general@taxation.gov.fk

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