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Taxes (Amendment) Ordinance 2020 Guidance

Introduction

This guide provides an introduction to the Taxes Amendment Bill 2020.

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 .

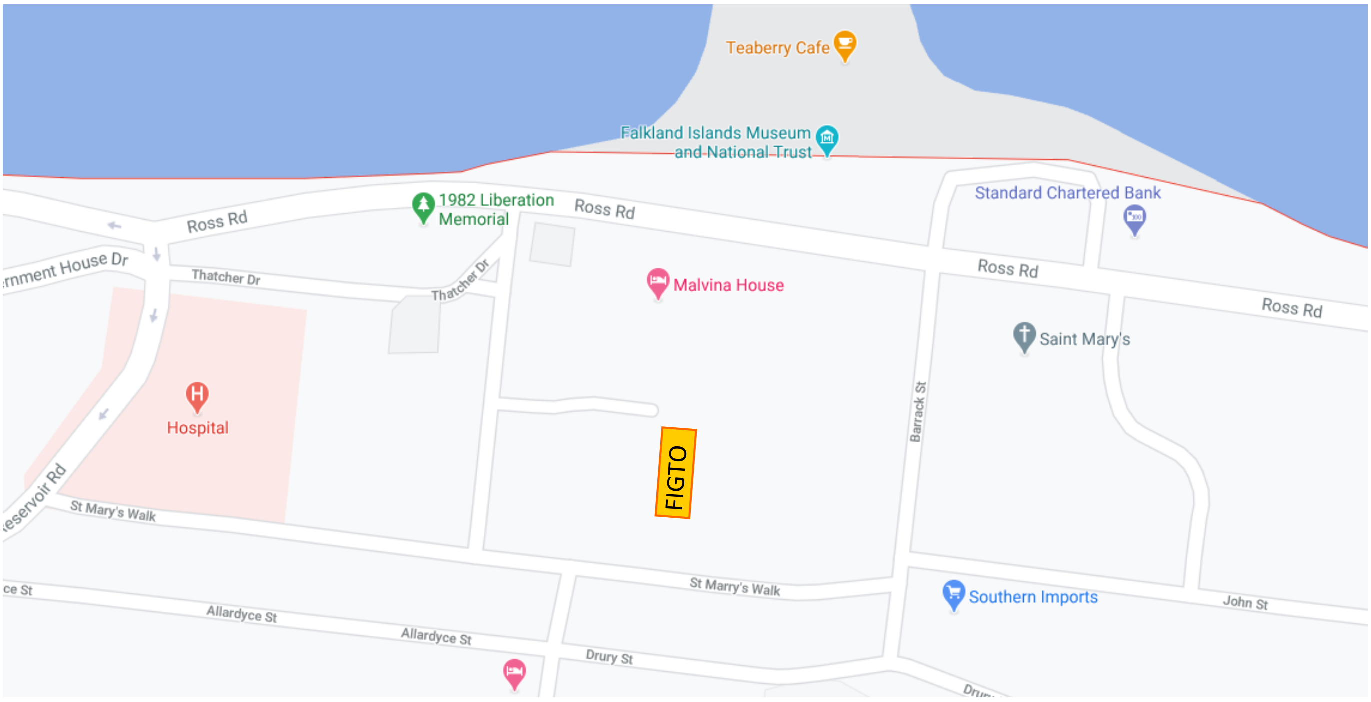
Help and Assistance

For further help with completing your tax return you can download the "tax return guide" from the Taxation website: www.fig.gov.fk/taxation or a hard copy can be requested from FIGTO on telephone +500 28470.

If you have a question or wish to have a meeting please contact FIGTO using the above information.

Where is the Tax Office?

The Tax Office is located behind the Malvina House Hotel in the yellow Portacabin



Exemptions from tax

Section 57(1)(r) - 30 days increasing to 45 days

The increase from 30 days to 45 days allows a person to be present in the Falkland Islands for 45 days or less, in any 12 month period and be exempt from tax on their:

i) income from employment in respect of any part of that period,

ii) directors' emoluments in respect of any part of that period, and

iii) any prescribed annual value, or other benefit, chargeable to income tax in respect of the individual's employment for any part of that period.

Example 1 *— Jim has been in the Falklands for work for 10 days in March 2020 and a further 21 days in January 2021. As he has been in the Falklands for more than 30 days he will be liable to tax on his income from his employment etc.*

Example 2 *—Jane has been in the Falklands for work for 10 days in June 2021 and a further 21 days in January 2022. As she has been in the Falklands for less than 46 days she will be exempt from tax on her earnings that fall within s57(1)(r).*

Jane then comes back to the Falklands for a holiday for 18 days in April 2022. Even though it is for a holiday and not employment she will have been present in the Falklands for over 45 days in a 12 month period and the exemption will not apply to her earnings and she will be liable to tax on all her relevant earnings.

The 45 day limit applies to a persons presence in the island regardless of the reasons why they are here. If a person is here for a holiday and then visits again for work both visits will count towards the number of days they are present in the islands.

This exemption does not apply to the POAT regulations and tax should still be deducted under the POAT regulations from day 1. If the exemption is met an individual can complete a non-resident tax return to claim a refund of the tax deduction via POAT.

The commencement date is periods of 12 months ending on or after 1 January 2022. This is a look back provision which allows FIGTO to look back to 1 January 2021 to establish whether a person has been present in the Falkland Islands for 46 days within the 12 months ending 1 January 2022.

Exemptions from tax

Section 57 (v) - Employees taking meat and produce from a business in Camp

These exemptions were previously included as an Extra Statutory Concession. Section 57 (v) allows an employee employed in camp by an agricultural business to receive up to £1,000 of agricultural produce a year including meat without being liable to tax on it. Any amounts of produce received above £1,000 will be taxable income. It is important to note that the £1,000 is based on retail value.

Example 3*— Poppy worked in camp for an agricultural business and was given £766 worth of lamb and potatoes from the business. Poppy would not have to declare this as taxable income.*

Example 4*—Ollie worked in camp for an agricultural business and was give £2,325 worth of lamb and grown produce. Ollie would be able to have £1,000 of the produce without declaring it as his taxable income then the remaining £1,325 would be treated as taxable income.*

Section 57 (w) - Owners taking meat and produce from their business in Camp

Section 57(w) is similar to section 57 (v) although this allows the business owner in camp of their agricultural business in camp to receive up to £1,000 of agricultural produce a year including meat without being liable to tax on it.

Example 5*—Harry owns an agricultural business in camp and lives in camp, he takes £300 worth of lamb from his business. Harry would not have to declare this as taxable income.*

Example 6*— Clara owns a business in camp and lives in camp, she takes £1,654 of beef from her business. Clara can have £1,000 of the produce without declaring it as her taxable income then the remaining £654 would be treated as taxable income.*

Both section 57 (v) and section 57 (w) come into force on 1 January 2022.

Assets that cost £500 or less

Section 97A(eb) - Revenue deductions for assets of £500 or less

This subsection allows assets that are acquired for £500 or less and would have qualified for depreciation allowances under Chapter II Part V except for section 105(7) to be allowed as a revenue deduction and not included in the depreciation allowances computations. This applies to businesses whether they are a company, sole trader (self employed) or a partnership.

Example 7— *House Cleaners Ltd makes their accounts to 31 March each year. The business acquired a washing machine on the 21 January 2021 and an industrial carpet cleaner for £1,278 on 10 April 2021. The washing machine has to go through the depreciation allowance computation and should be included in the plant and machinery pool as it was acquired prior to the next period of accounts starting on or after 1 January 2021.*

The carpet cleaner was acquired in the period of account that started on 1 April 2021 (the next one after 1 January 2021) but as the asset was over £500 it will need to be included in the depreciation allowance computation.

Example 8—*Joe's Farm makes their accounts to 31 March each year. The business acquired a welded mesh clip tool for £448.50 on 13 May 2021. Joe will be able to claim a deduction of £448.50 in their profit and loss account as this one asset is less than £500. In the same year Joe bought a second hand two wheeler for £1,350 this will go into the depreciation allowance computation as it is over £500 for the one asset.*

Section 105(7) - No depreciation allowances if £500 revenue deduction

If you have claimed the deduction for an asset of £500 or less then you cannot also include the asset in the depreciation allowance computation. Section 105(7) has been included to stop a double claim of a revenue deduction for assets of £500 or less also qualifying for depreciation allowances.

The commencement date for both the above subsections are for periods of account starting on or after 1 January 2021.

Section 97E—Renewable Energy Technology in Camp

When renewable energy technology has been acquired by a business for use in Camp then the business can claim up to 150% of the cost of the asset up to £50,000 of expenditure. For amounts over £50,000 the first £50,000 will get the tax relief at 150% and the remaining amounts can be included in the depreciation allowance computation.

Depreciation allowances have to be claimed, they are not automatically granted and the taxpayer can choose whether to claim them or not.

This applies to businesses whether they are a company, sole trader (self employed) or a partnership.

Example 9*—Bob's Beef Limited acquires a wind turbine for their farm in camp for £35,000. In the tax computation for the period when it was acquired they can claim tax relief of £52,500 [£35,000 x 150% = £52,500] against their profits.*

Example 10*—Lydia's Lamb acquires solar panels for their farm in camp for £68,000. In the tax computation for the period when it was acquired they can claim tax relief of £75,000 [£50,000 x 150% = £75,000].*

The difference between £68,000 and £50,000 is £18,000 which can go to the depreciation allowance plant and machinery pool. The £18,000 will qualify for the normal renewable energy technology, plant, machinery and vehicle depreciation allowance rate, currently 40%. [£68,000—£50,000 = £18,000 x 40% = £7,200].

For an enhanced deduction to be given, a claim must be made to FIGTO on the prescribed form, a copy of which can be found at the end of this guide or obtained from FIGTO. The form must accompany the submission of the tax return and the claim for the relief must be included in the tax computation.

The commencement date is for the periods of account starting on or after 1 January 2021.

Depreciation Allowances

Section 105(4) - Losses created or increased by depreciation allowances

For periods of account starting on or after 1 January 2021 depreciation allowances can create a tax loss or increase a tax loss. The rules on how tax losses can used are included in S126 TO 97 for unincorporated business and S128 TO 97 for companies and are summarised below :

For individuals (assuming they meet the criteria for the losses to be used) the losses can be utilised in the following order:

1. Set off against the individuals other income for the same year
2. Carried back and set off against profits of the businesses from the year before
3. If the businesses was being carried on in the earlier year, against other income for that earlier year

Or,

1. Carried forward as long as the business continues and set against the profits of the business in the next year
2. Carried forward as long as the business continues and set against other income of the next year
3. Continue to be carried forward to the following years as long as the business continues.

For companies (assuming they meet the criteria for the losses to be used) the losses can be utilised in the following order:

1. Against other income of the company in the accounting period
2. Carried back to the previous accounting period
3. Carried forward as long as the business continues and set against the profits of the business in the next accounting period
4. Carried forward as long as the business continues and set against other income of the next accounting period
5. Continue to be carried forward to the following accounting periods as long as the business continues.

The commencement date is for the periods of account starting on or after 1 January 2021.

Depreciation Allowances

Section 106(3A) - Definition of expenditure

The definition of expenditure has been expanded to include constructing and enhancing assets, prior to this amendment it was only the expenditure on the acquisition of the asset that would be allowable expenditure for depreciation allowance purposes. You can now claim depreciation allowances when you improve or construct an asset and not only when it has been bought.

Asset definitions Section 106(4)

There have been changes made to the definitions of "building", "renewable energy technology" and "written down value". In addition to these changes, further definitions have been added to this subsection, these are; "consolidated laydown", "jetty", "ground works", "major shareholder".

The changes and additions aim to make the legislation clear and easier to understand as well as future proofing the legislation.

Section 106(5)

This subsection has been amended to include enhancing or constructing in addition to acquisition. This widens the scope of where depreciation allowances can be claimed.

The commencement date for all the above changes is for the periods of account starting on or after 1 January 2021.

Depreciation Allowances

Section 116(1) and (1B) - Depreciation Allowances for Renewable energy technology

This has been amended to make it clear that renewable energy technology (over £50,000 for camp and all non-camp) is within the same depreciation pool as plant, machinery, vehicle and aircrafts.

Subsection 1B has been repealed as the disposal value of renewable energy technology will follow the disposal valuation as the pool it is now included in.

Section 116 (6A) - Depreciation Allowances for Machinery

Prior to this change machinery in camp could have depreciation allowances of up to 60%. The change will bring all machinery depreciation allowances to the same rate of 40% whether the machinery is in camp or not.

Section 116 (9)(c) - Depreciation Allowances for Farmhouses

Farmhouses were unintentionally removed from receiving depreciation allowances in a previous amendment of the Taxes Ordinance. This change is ensuring farmhouses receive depreciation allowances at a rate of 10% under the legislation. The omission of this relief was unintended and FIGTO have continued to allow claims for deprecation allowances on farmhouses.

The commencement date for all the above changes is for the periods of account starting on or after 1 January 2021.

Depreciation Allowances

Section 116(11) Buildings occupied for agricultural purposes

Previously the legislation required the apportionment of the acquisition costs of buildings that were occupied principally for agricultural purposes. The changes that have been made no longer require the acquisition costs of a building to be apportioned if the Commissioner is satisfied that the building is to be occupied principally for agricultural purposes.

Section 116(13A) Farmhouses

Similar to the above, this subsection allows the expenditure incurred for a farmhouse to be fully allowed and not apportioned even if it is used for more than one purpose e.g. work and living.

Section 116(14) Car parks, hard standing, roads, consolidated laydown and jetty

The rate for car parks, hard standing and roads has increased from 2% a year to 5% with roads being capped up to £100,000 a km.

The new categories of consolidated laydown and jetty have been given a rate of 5%.

The commencement date for all the above changes is for the periods of account starting on or after 1 January 2021.

Depreciation Allowances

Section 117(1) - Writing-down allowances and balancing charges for renewable energy technology, plant, machinery and vehicles (including aircraft)”.

Renewable energy technology has been included in this subsection so that it will be within the same depreciation pool as plant, machinery, vehicle and aircrafts. This has also been amended to widen the availability of depreciation allowances so that it applies to the construction or enhancement of the assets as well as the acquisition.

Section 117(2) and (2A) - Written down value (WDV) of less than and more than £1,000 on the asset pool

The following items are all to be included in the same asset pool; renewable energy technology, plant, machinery and vehicles. Falling in the same pool means they should all be included when the 40% depreciation allowance is calculated. If the total written down value at the start of the year is less than £1,000 then you will be able to claim the whole amount as the depreciation allowance for the year.

If it is more than £1,000 then you will need to follow the normal depreciation allowance rules and claim 40% of the value.

Example 11— *Julie’s Plumbing business has a renewable energy technology, plant, machinery and vehicles pool that has a WDV bought forward figure of £968.00 at 1 April 2021. In the period ending 31 March 2022 Julie does not buy any renewable energy technology, plant, machinery or vehicles. As the pool is less than £1,000 Julie can deduct the full £968 in the tax computation as a depreciation allowance.*

Example 12— *Jack’s Haulage business has a renewable energy technology, plant, machinery and vehicles pool that has a WDV bought forward figure of £1,005 at 1 April 2021 after. In the period ending 31 March 2022 Jack does not buy any renewable energy technology, plant, machinery or vehicles. As the pool is over £1,000 Jack has to follow the normal depreciation allowance rules and claim 40% = £402. This will give a bought forward figure of £603 at 1 April 2022 which is less than £1,000 and Jack can claim the full £603 for the period ending 31 March 2023, if there are no additions in that period which brings the WDV over £1,000.*

The commencement date for all the above changes is for the periods of account starting on or after 1 January 2021.

Other amendments to Taxes Ordinance 1997

Miscellaneous changes

There have been a number of changes within the depreciation allowances sections. These changes have been made to ensure that depreciation allowances can be claimed when an asset is enhanced, constructed or acquired by a business. These changes have been made to:

- Section 107(3)(b)
- Section 111(2)
- Section 112(4)
- Section 113(3)(b)
- Section 116(1), s116(4), s116(5), s116(6), s116(9) and s116(10)(c).

Repealed sections

A number of sections have been removed from the Taxes Ordinance these are:

- Section 23 (6), (7) and (8)
- Section 28 (3)(c), (3A)(a), (3B), (3C) and (3D) - commencement date 1 January 2021.
- Section 28 (3A)(b)
- Section 116 (1)(f) and (1B)
- Section 118.

The commencement date for all the above changes is for the periods of account starting on or after 1 January 2021, unless stated otherwise.

Medical Services Tax Ordinance 2010

Section 16 (1)—Calculation of relevant profits

The amendment to this subsection ensures that when calculating the business profits for Medical Services Tax (MST) it takes into account the specific deductions allowed under section 97A Taxes Ordinance 1997.

The commencement date for the above change is for the periods of account starting on or after 1 January 2021.

Section 21—Exemptions

This section covers who and what is exempt from MST.

Section 21(1)(k) - this updates the exemption to align it to the Income Tax exemption for a person who is present in the Falkland Islands for 30 days or less to 45 days or less.

Section 21(1)(r) and (s) this ensures that the meat or produce taken from a business in camp by an employee or owner in Camp is exempt for a value of up to £1,000. This aligns the exemption to the Taxes Ordinance.

The commencement date for the above changes to section 21 come into force for periods of 12 months ending on or after 1 January 2022.

Photo credits to Jody Aldridge and Tansie Bonner.