FALKLAND ISLANDS

Payments On Account Of Tax (Employees' Deductions) Regulations 1997

(S.R. & O. No. 23 OF 1997)

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FALKLAND ISLANDS

Payments On Account Of Tax (Employees' Deductions) Regulations 1997

[DATE OF COMMENCEMENT: IN ACCORDANCE WITH REGULATION 1]
(Unless otherwise indicated)

1 Citation and commencement

These Regulations may be cited as the Payments on Account of Tax (Employees' Deductions) Regulations and shall apply in relation to deductions required to be made, or deemed to have been made, under Part IV of the Taxes Ordinance 1997 after 1st January 1998

2 Interpretation

(1) In these Regulations-

"earnings"-

(a) if regulation 10 applies, must be construed in accordance with that regulation;

(b) if regulation 12B applies, means an amount determined by (or on behalf of) the Commissioner;

(c) otherwise, has the same meaning as under section 3 of the Medical Services Tax Ordinance (No. 13 of 2010);

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

"Medical Services Tax" means the tax imposed under the Medical Services Tax Ordinance 2010;

[S. 59/Ord. 13/10/w.e.f. 1/1/11 and Revision w.e.f. 31/07/2017]

"monthly paid employee" means an employee who is paid once every calendar month or at greater intervals;

"pay period", in relation to any remuneration, means the period in respect of which the remuneration is payable;

"POAT deduction" means a deduction required to be made under Part IV of the Taxes Ordinance or Part 7 of the Medical Services Tax Ordinance;

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

"remuneration"-

(a) does not include a pension or annuity;

(b) if regulation 10 applies, must be construed in accordance with that regulation;

(c) if regulation 12B applies, means an amount determined by (or on behalf of) the Commissioner;

(d) otherwise, means, in relation to a person, the gross amount of that person's earned income, before any deductions;

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

"the Taxes Ordinance" means the Taxes Ordinance;

"tax tables" means the tables prepared by the Commissioner under -regulation 4 below; and

"weekly paid employee" means an employee who is not a monthly paid employee.

(2) . . .

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

(3) Any reference in these Regulations to a section is a reference to that section of the Taxes Ordinance.

3 Application of Regulations

(1) These Regulations shall apply for the determination of the amount of any POAT deduction.

(1A) The following regulations apply for the purpose of determining deductions to be made for the purposes of payments on account of Medical Services Tax-

(a) regulation 3(4);

(b) regulation 8A;

(c) regulation 9;

(d) regulation 10; and

(e) regulations 11A, 11B, 12, 12B and 13.

[S.R. & O. 22/13/w.e.f. 1/1/14.]

(2) Nothing in these Regulations shall require or authorize any deduction to be made in relation to income tax from the remuneration of any employee who-

(a) in the case of a weekly paid employee, has not worked at least 15 hours in the employment of one or more employers during the period in which the remuneration is

paid ("the pay period") if, and only if, that employee has not worked 60 hours in aggregate during that pay period and the three periods preceding that pay period;

[S.R. & O. 22/13/w.e.f. 1/1/14.]

(b) in the case of a monthly paid employee, has not worked at least 60 hours during the pay period in respect of which the remuneration is paid;

or, except in accordance with section 85(7), in respect of remuneration which is exempt from tax under section 13.

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

(3) In paragraph (2) above, "worked", in relation to hours for which an employee is paid, means hours in respect of which he is for any reason paid, and whether or not he has actually rendered any services to the employer during those hours.

(4) Deductions must be made in relation to Medical Services Tax in respect of all employees who are liable to Medical Services Tax, regardless of how many hours the employee worked during the pay period.

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

4 Tax tables

(1) The Commissioner must prepare tax tables for the purposes of these Regulations setting out the amount of POAT deductions to be made from remuneration payable to employees under these Regulations.

(2) Tax tables prepared in accordance with this Regulation must be made available free of charge to any employer who is required to make any POAT deduction and the employer must ensure the correct usage of the tables in the calculation of deductions.

[S.R. & O. 22/13/w.e.f. 1/1/14.]

5 Alternative formula

(1) Subject to paragraph (4), the formula set out in paragraph (2) may be used by an employer to determine the amount of any POAT deduction to be made from any payment of remuneration payable to an employee for any period, instead of the tables prepared under regulation 4, and in that paragraph-

(a) the remuneration in question is referred to as "the relevant remuneration", and

(b) the year in which the remuneration is payable is referred to as "the income year".

[S.R. & O. 22/13/w.e.f. 1/1/14.]

(2) The formula which may be used instead of the tables is-

(a) if R is equal to or less than W_0-

$$PD = 0;$$

(b) if R is greater than W_0 but equal to or less than W_1-

$$PD = (R - W_0)T_{R1}$$

(c) if R is greater than W_1-

$$PD = [(R - W_0)T_{R1} + (R - W_1)(T_{R1} - T_{R1})];$$

In each case PD is the POAT deduction required to be found, rounded down to the nearest whole number.

[S.R. & O. 28/03/w.e.f. 1/1/04.]

(2A) The key to these formulae is as follows-

$$W_0 = \frac{A}{D}$$

$$W_1 = \frac{U_{L1} + A}{D}$$

D is the result of dividing the number of days in the year in which the remuneration is payable by the number of days in the pay period, rounded down to the nearest whole number;

R is the relevant remuneration, rounded down to the nearest whole number;

T_{R1} is the lower rate of income tax expressed as a decimal;

T_{R2} is the higher rate of income tax expressed as a decimal;

U_{L1} is the maximum amount of income which is chargeable to income tax at the lower rate at the time the remuneration is payable;

A is equal to the amount specified in section 16(1) at the time the remuneration is payable.

[S.R. & O. 28/03/w.e.f. 1/1/04.]

(2B) The Commissioner may give a direction to an employer under this paragraph in relation to specified employees of the employer or in respect of specified classes of employees of that employer or of all his employees, but a direction may not be given under this paragraph except with the agreement of the employer.

A direction under this paragraph may be referred to as a "POAT direction".

[S.R. & O. 35/99/w.e.f. 1/1/00.]

(2C) A POAT direction shall provide for the calculation of the POAT deductions which are required to be made from the remuneration of employees to whom the direction relates, and where a POAT direction is given to an employer, the employer shall calculate the POAT

deduction for each such employee in accordance with the direction, instead of the tax tables or any of the formulae set out above.

[S.R. & O. 35/99/w.e.f. 1/1/00.]

(2D) The Commissioner may request information from an employer before giving a POAT direction under subsection (2), and it shall be the duty of the employer to comply with the request within a reasonable time.

[S.R. & O. 35/99/w.e.f. 1/1/00.]

(2E) An employer of an employee whose remuneration exceeds the highest figure in the tax tables shall notify the Commissioner that he employs such a person not later than one month after the later of the following-

(a) the first day of such employment;

(b) the day on which the employee's remuneration exceeds that figure; or

(c) ...

[S.R. & O. 35/99/w.e.f. 1/1/00. and S.R. & O. 22/13/w.e.f. 1/1/14.]

(2F) A person who fails to comply with paragraph (6) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

[S.R. & O. 35/99/w.e.f. 1/1/00.]

(2G) Nothing in this regulation applies for the calculation of a POAT deduction for any person within regulation 9.

[S.R. & O. 35/99/w.e.f. 1/1/00.]

(3) The employer of an employee whose remuneration exceeds the highest figure in the tax tables shall use the formula in sub-paragraph (1) above to calculate the POAT deductions for that employee.

(4) This regulation has effect subject to regulations 10 and 11.

6 Deductions to be made from remuneration paid more frequently than weekly

(1) This Regulation applies in relation to employees who are resident in the Falkland Islands and are paid more frequently than weekly, but does not apply in relation to remuneration as respects which deductions are made or are required to be made under Regulation 5.

(2) The applicable remuneration of an employee who is paid at intervals of less than a week is where-

$$£ \quad \frac{R \times 36}{H}$$

R is the amount of remuneration paid to the employee in respect of each interval; and

H is the number of hours worked by the employee in respect of which that remuneration is paid (to the nearest whole number).

(3) The employer of an employee in relation to whom this regulation applies shall make a POAT deduction from each payment of remuneration made to the employee of an amount equal to

$$£ \frac{A \times H}{36}$$

where-

A is the amount specified in the tax tables as the deductible amount in relation to an amount equal to the employee's applicable remuneration; and

H is the number of hours worked by the employee in respect of which that payment of remuneration is made (to the nearest whole number).

(4) This regulation has effect subject to regulations 10 and 11.

7 Deductions to be made from other remuneration paid more frequently than monthly

(1) This regulation applies in relation to employees who are resident in the Falkland Islands and are paid more frequently than monthly but not more frequently than weekly, but does not apply in relation to remuneration as respects which deductions are made or are required to be made under regulation 5.

(2) The applicable remuneration of an employee who is paid more frequently than monthly (but not more frequently than weekly) is his actual remuneration for the pay period in question.

(3) The employer of an employee in relation to whom this Regulation applies shall make a POAT deduction from each payment of remuneration made to that employee equal to the amount specified in the tax tables as the deductible amount in relation to an amount equal to the employee's applicable remuneration.

(4) This regulation has effect subject to regulations 10 and 11.

8 Deductions to be made from remuneration paid monthly or less -frequently

(1) This Regulation applies in relation to employees who are resident in the Falkland Islands and are paid monthly or at greater intervals, but does not apply in relation to remuneration as respects which deductions are made or are required to be made under regulation 5.

(2) The applicable remuneration of a monthly paid employee is his actual remuneration for the pay period in question.

(3) The employer of an employee in relation to whom this Regulation applies shall make a POAT deduction from each payment of remuneration made to that employee equal to the amount specified in the tax tables as the deductible amount in relation to an amount equal to the employee's applicable remuneration.

(4) This regulation has effect subject to regulations 10 and 11.

8A Additional deductions in respect of employee's Medical Services Tax

(1) In addition to the POAT deduction calculated under regulation 4,5,6,7 or 8, the POAT deduction must also include a sum in respect of MST for any person over the age of 17 and the deduction is produced by using the formula-

$$(E - (A \times T)) \times M_{-ee}$$

(2) There must be no deduction where $E < A \times T$.

(3) In this regulation-

"A" means the number of days in the pay period divided by the number of days in a year;

"E" means the gross amount of the employee's earnings during the period;

"M_{-ee}" means the rate at which Medical Services Tax is payable by employees under section 5(a) of the Medical Services Tax Ordinance; and

"T" means the amount to be deducted set out under section 37A(1) of the Medical Services Tax Ordinance.

[S.R. & O. 22/13/w.e.f. 1/1/14.]

9 Non-resident employees

(1) This Regulation applies in relation to employees who are not resident in the Falkland Islands.

(2) The employer of an employee to whom this regulation applies must make a POAT deduction from each payment of remuneration to the employee.

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

(2A) The amount of the deduction to be made under paragraph (2) is the total of the following amounts-

(a) in respect of income tax, the amount produced by the following formula-

$$T_{R1} \times R$$

(b) in respect of Medical Services Tax, the amount produced by the following formula-

$$M_{-ee} \times E$$

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

(2B) In paragraph (2A)-

"E" means the gross amount of the employee's earnings during the period;

"M_{-ee}" means the rate at which Medical Services Tax is payable by employees under section 5(a) of the Medical Services Tax Ordinance;

"R" means the employee's remuneration for the period; and

"T_{R1}" means the lower rate of income tax.

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

(3) This regulation has effect subject to regulations 10 and 11.

10 "Free of tax" remuneration

(1) An employer is responsible for correctly calculating the deductions to be made from an employee's remuneration for one or more of the following-

(a) income tax; or

(b) Medical Services Tax.

(2) An employer must ensure that the deductions under paragraph (1) are correctly calculated and that the balance of the payment to be made to the employee represents the net payment due to the employee.

(3) For purposes of this regulation, an employee's remuneration (gross payment) is the sum total of the net payment made to the employee plus the sums deducted for the payments made under paragraph (1).

[S.R. & O. 22/13/w.e.f. 1/1/14.]

11 Employees with more than one employment

In any case where an employee is employed by more than one employer during a year and the periods of employment wholly or partly coincide, then-

(a) the employee shall notify the Commissioner of the names of the employers and the dates when the different employments began as soon as is reasonably practicable thereafter; and

[S.R. & O. 22/13/w.e.f. 1/1/14.]

(b) the employers concerned shall comply with any direction which the Commissioner may give as to the calculation of the POAT deduction to be made in respect of that employee for those pay periods.

11A Payments on account of employer's Medical Services Tax

(1) In addition to the POAT deduction made from each payment made to an employee, the employer is also liable to make a payment on account of employers' Medical Services Tax on the earnings represented by that payment.

(2) The amount of each payment on account to be made under paragraph (1) is the amount produced by the following formula-

$$M_{-er} \times E$$

(2B) In paragraph (2A)-

"E" means the gross amount of the employee's earnings during the period;

"M_{-er}" means the rate at which Medical Services Tax is payable by employers under section 5(b) of the Medical Services Tax Ordinance.

(3) Payments on account for which an employer is liable under paragraph (1) must be accounted for in the same way as deductions made by that employer.

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

11B Returns for registering a new business for deductions and payments

(1) A person who commences to carry on a business in the Falkland Islands ("the employer") must deliver a return (the "new business return") to the Commissioner stating-

(a) whether or not any person is employed in the business; and

(b) any other particulars required in the return.

(2) A return under paragraph (1) must be made on or before the 14th day of the calendar month following the month in which the business commences to be carried on.

[S.R. & O. 22/13/w.e.f. 1/1/14.]

12 Accounting for deductions and payments on account

(1) This regulation applies to each person required to do one or more of the following things-

(a) deduct a sum under-

(i) these Regulations;

(ii) Part 4 of the Taxes Ordinance; or

(iii) Part 7 of the Medical Services Tax Ordinance; or

(b) make a payment on account of Medical Services Tax payable as an employer under-

(i) regulation 11A; or

(ii) Part 7 of the Medical Services Tax Ordinance.

(2) A person to whom this regulation applies must, on or before the 14th of each month-

(a) deliver to the Commissioner a return ("the monthly return") in the prescribed form containing all particulars required to be completed in the return; and

(b) remit to the Commissioner the total amount of the deductions and payments on account required to be made for the previous month.

(3) Notice in writing must be given on or before the 14th day of the calendar month following the month in which any of the following events occurs-

(a) the employer ceases to have any employees working in the business;

(b) the employer begins to employ one or more employees in the business;

(c) deductions cease to be required to be made under these regulations or Part IV of the Taxes Ordinance in respect of any such employees;

(d) deductions begin to be required to be made under these regulations or Part IV of the Taxes Ordinance in respect of any such employees.

(4) The reference in paragraph (2)(b) to deductions under these Regulations include any deductions required to be made by virtue of section 84 of the Taxes Ordinance.

(5) If the amount of the deduction referred to in paragraph (4) exceeds the amount of the assessable income, the person required to make the deduction must include an amount equal to the amount of the excess in the remittance delivered to the Commissioner in accordance with paragraph (2)(b).

(6) A person who fails to comply with paragraph (2) or (3) above commits an offence and is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

[S.R. & O. 22/13/w.e.f. 1/1/14.]

12A Failure to comply with regulations 11B and 12

(1) A person who fails to deliver to the Commissioner any return required by regulations 11B and 12 is liable to a penalty of £50 in respect of each failure.

(2) The obligation to comply with regulation 12 continues notwithstanding the imposition of a penalty under paragraph (1).

[S.R. & O. 22/13/w.e.f. 1/1/14.]

12B Determination of remuneration and earnings

(1) This regulation applies if either-

(a) a person to whom regulation 12 applies fails to deliver a return to the Commissioner in accordance with regulation 12(2)(a); or

[S.R. & O. 22/13/w.e.f. 1/1/14.]

(b) the Commissioner thinks that the return is incomplete or inaccurate.

(2) If this regulation applies-

(a) the Commissioner may make a determination of the amount of the remuneration and earnings of each employee who was (or should have been) included in the return; and

(b) that amount is to be treated for the purposes of these regulations as the employee's remuneration and earnings for the period covered by the return.

(3) If the Commissioner makes a determination under paragraph (2)-

(a) the Commissioner must give notice of that determination to the person who made (or should have made) the return in relation to which the determination was made;

(b) that person may-

(i) object to the determination; and

(ii) appeal to the Tax Appeal Tribunal.

(4) Sections 175, 181 and 183 apply to objections and appeals made under paragraph (3)(b), as if-

(a) references to an assessment to tax included references to a determination made under paragraph (2); and

(b) references to the tax charged under an assessment included the payments on account of income tax and Medical Services Tax due in respect of the remuneration and earnings determined by the Commissioner.

[S. 59/Ord. 13/10/w.e.f. 1/1/11.]

13 Information and preservation of records

(1) A person who employs any person in the Falkland Islands or in a designated area must, within the time specified in paragraph (2), give notice to the Commissioner in a form designated by the Commissioner specifying all particulars required to be completed in the notice.

[S.R. & O. 22/13/w.e.f. 1/1/14.]

(2) For the purposes of paragraph (1), the notice must be given to the Commissioner -

(a) on or before the 14th day of the calendar month following the month in which the employee commenced employment with that person; or

(b) if the employee began or begins to work as an employee of an employer in the Falkland Islands or a designated area after their employment with that employer has begun, on or before the 14th day of the month following the month in which the employee began or begins to work in the Falkland Islands or a designated area.

[S.R. & O. 22/13/w.e.f. 1/1/14; S15(2)/Ord. 8/2021/w.e.f. 1/1/22 .]

(3) ...

[S.R. & O. 22/13/w.e.f. 1/1/14.]

(4) Paragraph (5) applies to a person required to do one or more of the following things-

(a) deduct a sum under-

(i) these Regulations;

(ii) Part 4 of the Taxes Ordinance; or

(iii) Part 7 of the Medical Services Tax Ordinance; or

[S.R. & O. No. 30/10/w.e.f. 30/11/10.]

(b) make a payment on account of Medical Services Tax payable as an employer under-

(i) regulation 11A; or

(ii) Part 7 of the Medical Services Tax Ordinance.

[S.R. & O. No. 30/10/w.e.f. 30/11/10.]

[S. 59/Ord. 13/10/w.e.f. 1/1/11 (as corrected by S.R. & O. No. 30/10/w.e.f. 30/11/10).]

(5) A person to whom this paragraph applies must-

(a) make a written record of-

(i) the deduction or payment on account; and

(ii) particulars of the employee in respect of whom it was made; and

(b) keep that record until the expiry of a period ending 6 years after the end of the calendar year in which the deduction or payment on account was made.

[S. 28/Ord. 13/16/w.e.f. 1/1/14.]

(6) A person who fails to comply with paragraph (1) or (5) above commits an offence and is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

[S. 28/Ord. 13/16/w.e.f. 1/1/14.]