

FALKLAND ISLANDS GOVERNMENT TAXATION OFFICE EXTRA STATUTORY CONCESSIONS

This is the second edition of the Extra Statutory Concessions (ESC) Publication, which has been amended to include the latest ESCs.

The leaflet will be continually updated after approval by ExCo of any and all future ESCs.

Copies of this leaflet are available on request from the Taxation Office.

Extra Statutory Concessions

There exist within the Falkland Islands taxation code several practices which have developed and persisted over the years, growing up as pragmatic reactions to legal anomalies or otherwise as sensible interpretations of the law in the instances where the strict wording of the law has proved inappropriate for addressing specific circumstances. These have often been acknowledged and approved by ExCo, or sometimes may have developed internally as practical reactive solutions arrived at by the Taxation Officer and the Commissioner of Taxation. One of the specific recommendations of the Tax Policy Framework review carried out in 2002 and 2003 was that these unofficial practices be codified formally and published, primarily for the sake of accountability and certainty. Henceforth any such practices will be presented to Executive Council for their consideration and approval, then published and applied consistently and openly.

An extra statutory concession is a relaxation in practice, which gives taxpayers a reduction in tax liability to which they would not be entitled under the strict letter of the law. Most concessions are made to deal with what are, on the whole, minor or transitory anomalies under the legislation and to meet cases of hardship in a specific area where a statutory remedy would be difficult to devise or would run to a length out of proportion to the intrinsic importance of the matter.

Published concessions are of general application, but it must be borne in mind that in a particular case there may be special circumstances which will need to be taken into account in considering the application of the concession. A concession will not be given where an attempt is made to use it for tax avoidance.

PENSION INCOME ALLOCATION FOR MARRIED COUPLES

Amendment to the Concession Approved 18th December 2003

The Falkland Islands code of personal taxation is based upon the principle of Independent Taxation of individuals, regardless of their marital status or domestic arrangements. However, the combination of the move to this system from 1st January 2003 and the simplification of personal allowances introduced from 1st January 2004 have meant that some married pensioner couples after that date have significantly higher tax charges than they did under the previous system. To ease this situation, married people, where one or both are aged 60 years or over, receiving pension income of any type (FI, occupational or personal pensions) on or after 1st January 2004 may elect jointly in their tax returns for this

to be treated as having being received equally between them. In this way their individual personal allowances may be used to reduce their joint tax liability in any year.

Explanation

For tax on income under Independent Taxation, each person's income is their own and only they can benefit from their tax allowances. However, the introduction of this system from 1st January 2003, followed by the abolition of the previously extremely generous age allowances from 1st January 2004, has significantly increased the tax liabilities of several pensioner couples. This was not an intended effect of the changes in 2003/04 and to obviate this negative impact on married couples, where one or both are aged 60 years or over, in receipt of one or more pensions will be permitted to split their pension income equally between themselves in any year if they wish to, so that they can take better advantage of both their personal allowances. This reflects the fact that in many instances the pension will only be in the name of the principal earner over the years, usually the husband, although he will have effectively worked, and saved towards the pension, on behalf of them jointly throughout his working life.

The Tax Office will therefore invite all married pensioners aged 60 years or over in the year prior to the year of assessment, when submitting their tax returns for income received in 2004 and subsequent years, to elect jointly to share any one or more sources of pension income (e.g. occupational or personal pension schemes or FIPS) equally between them if they wish. As the policy aim is to treat the pensions as being received jointly, there will not be a facility to split the pension other than equally – to do otherwise would be to invite couples to minimise their tax liabilities excessively.

Depreciation Allowances on Farmhouses

People in business for themselves are taxed upon a level of profits based on their business accounts. Under normal accounting principles the profit and loss account does not include capital expenditure, which is therefore not deductible for income tax purposes. However, the Falkland Islands tax code included a stand-alone system of Depreciation Allowances to give relief for the reduction in value of capital assets over time. Allowances due under the relevant rules as laid down in Chapter 2 of Part 5 of the Taxes Ordinance 1997 are treated as an expense of the business in arriving at the amount of assessable profits. The legislation stipulates that deductions may only be given in respect of expenditure incurred for the purposes of the business, and that if a building is used partly for non-business purposes no allowance will be given in respect of the non-business use. This rule is disregarded in respect of farmhouses occupied as the private residence of the farmer, where otherwise one would expect to have to calculate a business/private split. All capital expenditure on owner-occupied farmhouses will therefore qualify for Depreciation Allowances.

This concession only relates to capital expenditure, and does not extend to expenditure on the maintenance, upkeep and ongoing expenses of running the farmhouse, which will still require to be apportioned between those expenses pertaining to the running of the business, which are allowable deductions in computing the profits of that business, and those pertaining to the private occupation of the house, which are not.

Other capital expenditure on buildings used wholly for the purposes of the business (such as barns, sheds, workers accommodation etc) will qualify in full for Depreciation Allowances under the normal rules.

Explanation

Prior to the land reforms of the 1980's many farmhouses were provided to managers and as such the companies owning them correctly claimed depreciation allowances. The practice of allowing full depreciation allowances, with no private element excluded, continued after the land reforms even though the occupiers of the properties were now self-employed people in business. This is wrong in law and arguably inequitable as no one else in business can claim the personal costs of their private house against their business income. In practice, farmhouses which are also the farmer's residence will always have a considerable amount of private use, possibly even 100%, and certain items of capital expenditure on the farmhouse may easily be totally private, such as the building of an extension as a living room for example.

This issue was discussed during the Tax Policy Framework review in 2002/2003. As this has been a long held practice, and acknowledging the need to improve the quality of much of the housing in Camp, the review group did not propose stopping this practice at that time.

TAKING OR PROVISION OF FREE MEAT IN CAMP BUSINESSES

Goods for Own Use

It is a long established principle of tax law that where a person in business takes goods from the business for his or her own use or private consumption, the business accounts should be credited with the retail value of that item for the purposes of calculating taxable profits as if that had been a sale to a customer.

Where a person engaged in agricultural business takes meat or other produce from the business, either for their own consumption or for any other private purpose, then no charge will be imposed for the purposes of Falkland Island taxation as long as the normal retail value of the goods concerned does not exceed £1000 in any tax year.

Goods Provided to Employees

Section 8 of the Taxes Ordinance 1997 charges tax on 'gains or profits from any employment', whether received in money or otherwise. Many farmers will give free meat to their workers and their families, or allow these employees to take their own. This is strictly taxable as being a gain arising from the employment.

Where an employee or his/her family receives free meat or other produce from the employers business then no charge will be imposed for the purposes of Falkland Island taxation as long as the normal retail value of the goods concerned does not exceed £1000 in any tax year.

Explanation

There are several long standing non-cash practices in Camp which, although taxable under the law, have usually not been declared for tax purposes over the years and have not been

pursued by the Tax Department. To take into account the many years, over which this had been a normal feature of the Falkland Islanders' way of life, these are hereby formalised into published practice. Anyone in business or employed in agriculture will not be taxed on goods they take or receive free of charge, so long as the value of these does not exceed £1000 per year. For the purposes of this calculation, slaughtered meat should be taken at the value of the full carcass, rather than the higher potential retail value after butchery.

The figure of £1000 per annum allows for meat to the value of £20 per week. This figure should be kept open for review in line with inflation, but it should be borne in mind that this represents in itself a valuable concession unavailable to people engaged in any other business.

Use of company vehicles

Section 3(1)(b) of the Taxes (Benefits in Kind) Rules 2003 introduces a charge to tax, from 1 January 2004, on the benefit of a vehicle provided by an employer to an employee for his or her own use {or for the use by any member of that employee's family}, other than wholly for the purpose of performing the duties of that employment.

Under the Ordinance and Benefit in Kind Rules "employee" includes company directors.

The taxable annual value of having such a vehicle provided is £3000. There is an alternative taxable value of £40 per day if a vehicle is only made available on an ad hoc, rather than a regular, basis.

A vehicle provided by an employer to an employee is normally made available to enable the employee to carry out the duties of that employment. Where a vehicle is made available by reason of an employee's employment the legislation provides that it will be automatically treated as having been made available for private use. This means that a vehicle benefit charge will automatically apply.

However, the vehicle benefit charge will not apply if the employee

- is specifically prohibited from using the vehicle privately, **and**
- does not in fact use it privately.

Note that there are two parts to this test.

The mere prohibition of private use is insufficient on its own to prevent a tax charge. It is also necessary to show that a vehicle is not used for private motoring.

- Thus a provided vehicle will result in liability even if no private use is made of it **unless such private use has been specifically prohibited**
AND
- even if the director or employee shows that private use of a vehicle has been specifically forbidden, there must be **no private use of it if a charge is to be avoided.**

Employees who are required to take a vehicle home because they are on call will not be charged on the benefit of that vehicle provided that it is only used in an emergency. For the

avoidance of doubt we will not seek to charge a benefit on vehicles provided to public officers strictly in accordance with paragraphs 109 and 112 of Chapter K of General Orders.

Explanation

It is a fact that within the Falkland Islands it has become an established and long standing tradition for employees to use a vehicle provided by their employer, which is required for work purposes, for travelling from home to work and work to home, both at the start and end of the day and at lunchtime.

For the purposes of defining **private use** the use of that vehicle for travelling **directly** to and from work at the start and end of the day, and at lunchtime, will not be treated as private use.

If a vehicle is used for any other private purpose then a benefit in kind will arise and will become liable to tax. So, if on the way home an employee goes shopping that is a chargeable benefit. If, when on standby or on call the employee uses the vehicle to visit friends that is also a chargeable benefit.

N.B. This concession has been amended following approval by Executive Council at their meeting 24 February 2005. It will be applied retrospectively from 1 January 2005. The following, which was in the original concession,

“So we will not seek to charge a benefit on a vehicle provided to doctors, firemen, power station workers, etc. who are necessarily obliged to have that vehicle at their home in case they are called out in an emergency.”

has been replaced by

“For the avoidance of doubt we will not seek to charge a benefit on vehicles provided to public officers strictly in accordance with paragraphs 109 and 112 of Chapter K of General Orders.”

This change has been introduced to point out that FIG employees are not allowed to use FIG vehicles for private purposes without permission except for a strictly limited amount when on-call duty or unless such use has been properly authorised whereby an appropriate hire charge is payable.

Please note that, in the event abuse becomes apparent and cannot be controlled, there is a high risk that this concession will be withdrawn and, as a consequence, the Benefit in Kind Rules would be strictly applied. This would mean that any use of a vehicle provided by an employer for travel to and from work, etc. would result in a charge to tax as a benefit in kind.

Clubs, Societies and Associations

Unincorporated associations are within the charge to Corporation Tax on their income. Any club or association with any type of structure will come within this heading. This will normally include any organisation which has officers (e.g. a Treasurer and a Secretary perhaps) and engages in financial transactions. We have several organisations like this in the Falklands. Sports associations and social clubs, for example. All should come within

the tax net as companies and be taxed on their income – except for registered charities, which are exempt. As a concession, the Taxation Office does not insist on annual returns and accounts from Clubs and Associations, and will not pursue Corporation Tax on the income of these bodies.

However, should it transpire that in fact an organisation is being used commercially to generate income for the financial benefit of one or more of its members the concession will be withdrawn.

Explanation

Unincorporated associations are within the charge to Corporation Tax on their income. Any club or association with any type of structure will come within this heading. This will normally include an organisation which has officers (e.g. a Treasurer and a Secretary perhaps) and engages in financial transactions. One aim of this rule is to prevent individual office holders from being liable to income tax on income of the club.

We have several organisations like this in the Falklands. Sports associations and social clubs, for example. All should come within the tax net as companies and be taxed on their income – except for registered charities, which are exempt. Having said this, payments between members of a club are regarded as mutual transactions and not taxable.

It is a fact that most, possibly all, of these sort of organisations will make very small profits, if any. It is another fact that most will find it hard to separate members and non-members income. Some may have nothing approaching a formal Constitution. Many are engaged in charitable work, even though not exempt as charities themselves. Many have important social and historical functions among the people of the Falkland Islands.

Given all of these factors, the Taxation Office does not insist on annual returns and accounts from Clubs and Associations, except in the rare situation where an Association is run commercially with a view to making profits for the financial benefit of one or more individual members. (There may well be no such organisation in the Islands at the moment).

It must be emphasised that this arrangement is strictly a concession to the correct legal position. Some clubs will employ staff and pay fees or honoraria to officers, who will pay Income Tax through the POAT system in the usual way. This is quite in order as long as the sums involved reasonably reflect work done.

Entertainment Expenses

From 1st January 2003, section 8(1)(b) of the Taxes Ordinance 1997 has charged to tax all 'gains or profits from any employment' on all employees, including directors of a company, whether paid in cash or not.

So if an employer pays an employee a cash bonus as a reward that is taxable as part of their income. Consequently, a non-cash reward is also taxable as a 'gain or profit' from that employment from 1st January 2003.

It is an excepted practice in the Falkland Islands for employers to “reward” their employees for completing a specific job on time, or to a high standard. That reward usually consists of a night out with all costs of the employee, and his/her family or partner, being paid for by the employer. Such entertainment costs will become “income” in the hands of the employee, chargeable to tax.

The Tax Office will allow, by concession, an exemption from tax on entertainment expenses provided, and paid for, by employers on behalf of the employee and/or for a member of the employee’s family or household or their partner, subject to an annual financial ceiling of £100. This financial limit applies to each employee and includes the costs paid on behalf of a member of the employee’s family or household or partner.

The exemption should be taken as covering any form of hospitality (dinners, parties, etc) but not cash rewards. Any costs associated with the entertainment, such as transport or overnight accommodation, are also included in the exemption.

Section 99 of the Taxes Ordinance 1997 stops a business deducting from its profits any item of expenditure incurred in entertainment unless the Commissioner is satisfied that it was reasonably incurred for the purpose of that business.

This concession will allow the employer to claim those costs as a deduction against the business income, again subject to the maximum annual ceiling of £100 for each employee including the costs paid on behalf of a member of the employee’s family or household or their partner.

If all of the actual costs incurred in the year on an individual employee and their family/partner exceed £100 then the excess of that amount falls chargeable to tax in the employee’s hands. Similarly the employer cannot claim the excess over £100 as a deduction in the business accounts.

If the actual amount expended in the year is less than £100 then only the actual expenditure can be deducted from the business accounts.