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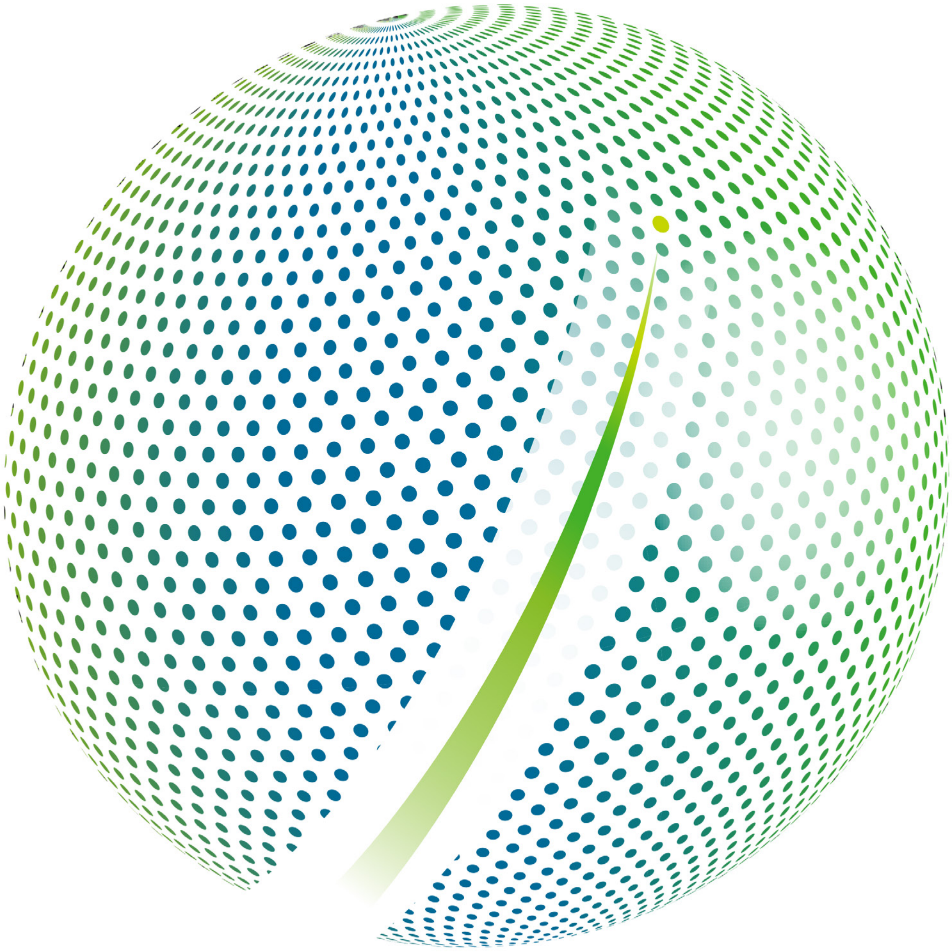

Papua New Guinea

Tax Alert

Income Tax Act Rewrite Series – Withholding Taxes

Withholding Tax Changes

This is the series of Alerts summarising the proposed major changes arising from the Income Tax Act rewrite. This Alert is based on the 9th draft of the legislation. We understand that the legislation will be introduced to Parliament in late November 2022 and have a commencement date of 1 January 2024.

The changes for Foreign Contractor Withholding Tax (FCWT) and Salaries and Wages Tax (SWT) are the subject of separate alerts and therefore not repeated here.

Resident Withholding Taxes

Interest

Interest withholding tax still applies (at 15%) where an interest payment is made to an individual, partnership and trust. However, the first K200 in a tax year of interest derived by a resident individual from a financial institution is exempt from tax. It would appear that this exemption applies separately to each financial institution. Note the withholding tax no longer applies to interest paid to a corporate. The withholding tax for individuals will remain creditable against their final tax liability, as determined based on the return of income filed.

Dividends

Dividends paid by a resident company to a resident company are exempt from tax. Such dividends are no longer assessable income eligible for a tax rebate. This will be advantageous to companies in a loss position who receive such dividends, as currently such dividends reduce the amount of losses. However, expenses incurred to drive such exempt income will be non-deductible.

Any dividends paid from a “Not for Profit” body or a company or trust that was formerly a “Not For Profit” will be subject to withholding tax at 30%.

Dividends paid to individuals, partnership and trust will still be subject to withholding tax at 15%. However, no withholding tax needs be deducted if:

- In the case of a trust, the trustee notifies the company to the extent that a resident corporate is entitled to the dividend, and
- In the case of a partnership, to the extent the company is notified that the partner is a resident company.

Prescribed Royalties

Amounts paid to customary landowners in relation to certain resource projects, fishing and timber operations remain liable to withholding tax at 5% and is a final tax.

Business Income Payment Tax (BIPT)

The current BIPT regime which was omitted from the previous draft has now been reinserted into the Act. A paying authority making a business income payment to a business income payee is required to withhold 10% BIPT unless they have a current “nil withholding tax authority” (currently a Certificate of Compliance) issued by the IRC. There are a number of conditions for a nil withholding tax authority to be issued. The relevant period in relation to a nil withholding tax authority application is four years immediately preceding the date of application. What is a business income payment subject to the 10% BIPT is to be defined in the Regulations.

Non-Resident Withholding Tax

Dividends, Interest, Annuities, Technical Fees and Natural Resource Amounts

A non-resident person (individual, company or trust) who receives a PNG sourced dividend, interest, annuity, technical fee or natural resource amount (essentially a royalty relating to natural resources whether living or not) will be subject to withholding tax at 15%.

A technical fee means a fee for managerial, administrative, technical, professional or consultancy services. Fees of this nature previously paid to a non-resident were subject to Management Fee Withholding Tax (MFWT) @ 17%. MFWT will no longer apply.

Non-resident withholding tax does not apply to income of a non-resident that is attributable to a permanent establishment in PNG. Such income would be included with the branch income and subject to income tax and branch profits repatriation tax.

Royalties

The rate of withholding tax on royalties is retained at either 10% or 30% with the higher rate applying where the payer and payee are associates.

Branch Profit Repatriations

There is also a new branch repatriation profits tax. Branch profit repatriations were not separately taxed in the past. However, branches were taxed at a rate of 48% on assessable income (except where the FCWT regime applied – see our separate Alert on Foreign Contractors for more details). From 1 January 2024 the tax rate falls to 30% and branch profits repatriated are taxed at 15%. The repatriated profits are measured as follows:

(Opening net assets + Profit for current year – Income Tax on current year profits – Closing net assets)

We note that the legislation still appears to have complications as it refers to the "total cost of assets net of liabilities" at the beginning and end of the year. In our view this should refer to the net book value of such assets and not the cost of such assets. In turn the net book value could be based on either the accounting or tax book values.

This is not technically a withholding tax, as it is payable with corporate income tax.

Insurance Premiums

Insurance premiums (including reinsurance premiums) are liable to withholding tax at 3%. Currently the rate is either 4.8% or 3 % depending upon the nature / residence of the recipient.

Non-Resident Entertainers

Further, as a new development, non-resident entertainers or group of entertainers who come over to perform in PNG will now be taxed at 10% for any performances conducted in PNG. This includes sports persons and sporting teams.

International Transportation

An international transportation income tax applies to non-resident carriers. The tax is calculated at 2.4% of gross amounts derived from passengers or cargo embarked or loaded in PNG and destined for a place outside PNG. Collection requirements as follows:

- Shipping
  - Before the grant of a clearance for a ship owned or chartered by a non-resident person for departure from PNG, the captain or chief commanding officer of the ship, or the shipping agent in PNG for the non-resident person, must pay the due in respect of the ship at the time that the return is furnished. Permission in writing, may be made to extend this to 20 days after departure.

- Aircraft
  - Before the grant of a clearance for an aircraft owned or chartered by a non-resident person for departure from PNG, the pilot of the aircraft or the agent in PNG for the non-resident person must pay the international transportation income tax due in respect of the aircraft at the time that the return is furnished.
  - However, the income of a non-resident person operating a ship or airline in international traffic is exempt from PNG income tax but only if an equivalent exemption from income tax is granted to PNG resident persons by the country in which the non-resident person is resident;

Capital Gains Tax (CGT)

Where a person is acquiring a taxable asset, for CGT purposes, from a non-resident they are required to deduct 10% of the consideration unless the vendor supplies a notice from IRC either varying or eliminating the withholding tax.

Tax Payable

In most cases, other than salary and wages tax, the withholding tax is payable on the 21st day after the end of the month that the relevant payment was made, However, as mentioned above, special rules apply in the case of branch profit repatriations.

Withholding Tax Certificates

A withholding tax agent (payer) must furnish the payee with a withholding tax certificate in a prescribed format by the due date for payment of the withholding tax (21 days following thew month of payment). The regulations may also require the withholding agent to furnish the payee with an annual withholding tax statement.

Impact of Tax Treaties and Other International Agreements

A Double Tax Treaty may reduce or eliminate the rate of withholding tax. Importantly, the new Act does contain anti-treaty shopping rules which can withdraw the treaty benefits. See our separate alert on tax avoidance for further details.

The abovementioned changes to the taxation of withholding taxes are significant and taxpayers should take time to ensure they understand the implications for their business. In particular they should ensure they have appropriate systems in place to identify withholding payments, make appropriate withholdings and account for such withholding payments to IRC on a timely basis. If you would like to discuss the draft changes, or their impact on your business or systems, please let us know.

For more details please contact your key Deloitte contacts or any of the following:

Leadership Contacts

Andrew Harris
Partner
Tax & Business Services
Tel/Direct: +675 308 7010
andrewharris@deloitte.com.pg

Sanchika Sutharshan
Partner
Tax & Business Services
Tel/Direct: +675 308 7160
ssutharshan@deloitte.com.pg

Maygen Turliu
Director
Tax & Business Services
Tel/Direct: +675 308 7017
mturliu@deloitte.com.pg

Declan Mordaunt
Senior Counsel
Tax & Business Services
Tel/Direct: +675 308 7037
dmordaunt@deloitte.com.pg

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