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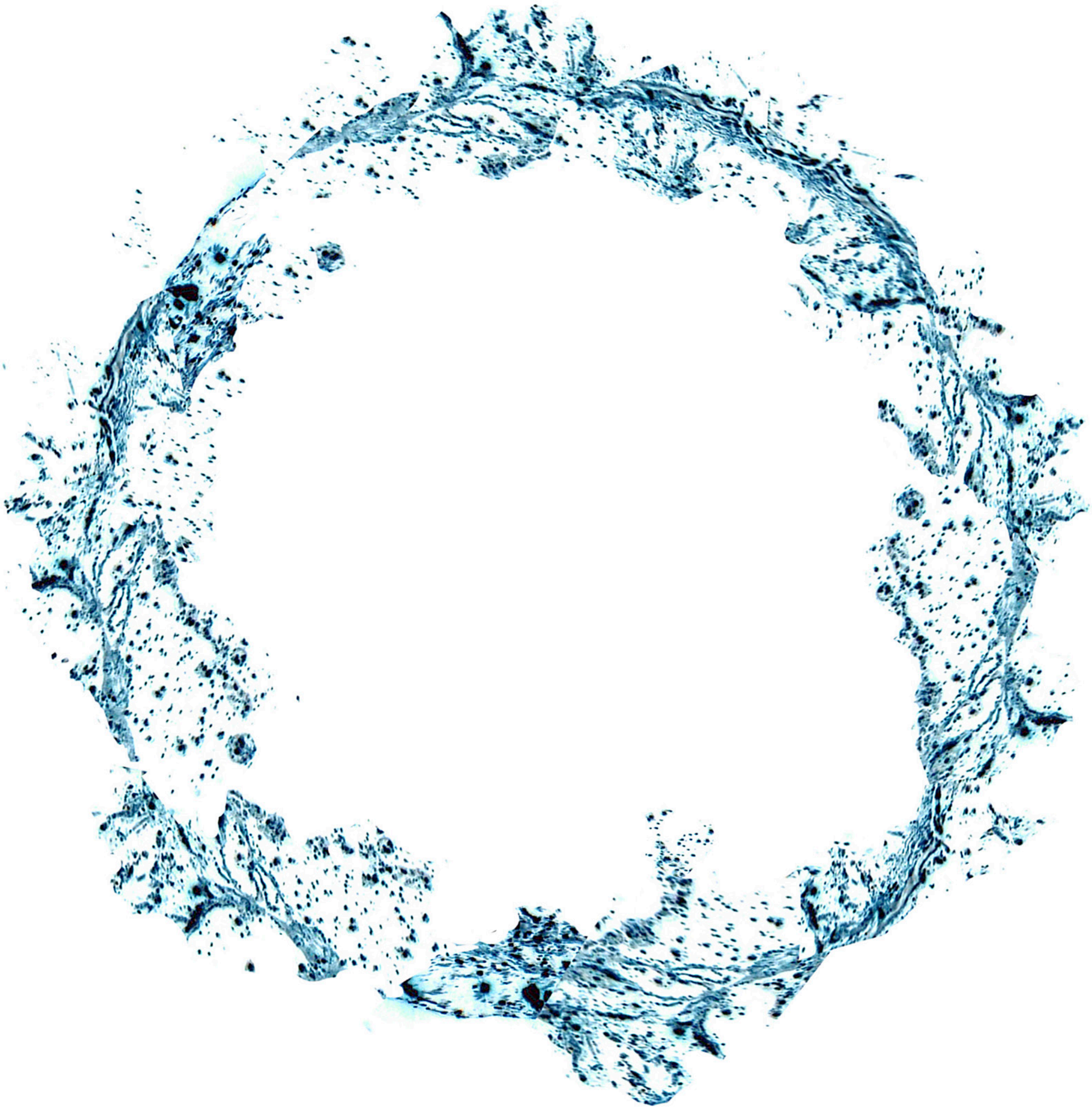

Papua New Guinea

Tax Alert

Alert #4

MAKING AN IMPACT THAT MATTERS since 1845

In this Alert, we bring to you updates on the following:

- Income Tax Reform Update
- Internal Revenue Commission (IRC) moving ahead with Launching new GST Monitoring System
- GST Section 65A Notices being Expanded.
- IRC Challenges Mining Giants over Dividends
- Clarification on TIN Deregistration Process
- IRC Audit Focus on Management Fees
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- Proposed Changes to the Australian Capital Gains Tax (CGT) Regime for Foreign Residents
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Have something to contribute? E-mail us at DTTTaxPG@deloitte.com.pg

Income Tax Act Rewrite Update

Treasury is still undertaking the process of applying the finishing touches to the draft new Income Tax Act under the Income Tax Act rewrite initiative. Most importantly, the draft Regulations to the new Act are yet to be released for feedback. On this, Treasury has stated they will undertake further workshops soon to discuss both the latest iteration of the draft Income Tax Act and its Regulations. While a new Income Tax Act still needs to pass the significant hurdle of being passed through Parliament, we understand the new Income Tax Act once legislated would come into effect on 1 January 2026 at the earliest.

Internal Revenue Commission (IRC) moving ahead with Launching new GST Monitoring System

The IRC has stated that they are progressing with its launch of a Goods and Services Monitoring System (GMS) in all shops or Point of Sale systems by the fourth quarter of 2024.

This is an anti-avoidance measure designed to address non-compliance in the sector. Once in place, the system will be installed in all shops where the 10% is automatically calculated and wired directly to IRC upon every purchase made.

This will leave retailers with significant cash flow issues and increased compliance costs as they seek refunds of GST input credits from IRC. IRC costs will equally increase but the Government will have significant cash flow advantages as it holds on to taxpayer refunds.

GST Section 65A Notices being Expanded

The IRC is doubling down on its focus on GST compliance and GST collection at source. This has seen an expanding of the issuing of Section 65A notices from Government Departments, Agencies and State-Owned Entities to the private sector. Once received a section 65A notice requires the taxpayer to pay the GST it is charged by suppliers straight to the IRC. Ordinarily, the GST invoiced by a supplier is paid back to the supplier who then accounts for the GST in its own return.

A Section 65A notice places additional GST obligations on the entity affected and complicates matters for its suppliers. It is important that taxpayers affected by Section 65A notices understand their additional compliance obligations and comply.

The expanding of Section 65A notices is a concerning development given it creates a dual GST collection system which increases both the compliance burden and the scope for taxpayer confusion and therefore errors. It can also increase the scope for taxpayers being in GST refund positions. While this may allow the Government to hold on to taxpayer refunds longer it is also keeping cash out of the economy for longer.

IRC Challenges Mining Giants over Dividends

The IRC has stated that major mining companies in Papua New Guinea have not paid dividends and have therefore not paid Dividend Withholding Tax (DWT) from 2013 to 2023. The IRC notes this despite a 389% increase in mineral export receipts. Commissioner General Sam Koim has expressed concerns over the lack of shareholder returns in the form of the distribution of profits as dividends. The media statement does not, however, address the prioritising the return of shareholder investment through the return of capital, though this is also a focus area of the IRC.

Clarification on TIN Deregistration Process

The Internal Revenue Commission (IRC) is conducting a TIN deregistration exercise to update its taxpayer register. Out of over 220,000 registered Taxpayer Identification Number (TINs), only about 16% have met their tax obligations by paying taxes or filing returns. The IRC notes this means that 84% have not fulfilled their responsibilities paying taxes or filing returns. Consequently, the IRC is working to bring these businesses into compliance and clean up the TIN register.

The IRC notes this deregistration exercise is not intended to shut down businesses or harm Small and Medium Enterprises (SMEs). It is meant to ensure that TIN holders are fulfilling their tax obligations.

To keep your TIN active, the IRC states taxpayers must:

- File a Corporate Income Tax (CIT) return for businesses.
- File a Personal Income Tax (PIT) return for individuals.
- Open a Salary and Wages Tax (SWT) account and file necessary returns if you have employees.
- Open a GST account and meet filling requirements if you issue invoices with Goods and Services Tax (GST) or have a turnover above K250, 000.
- A Nil return (CIT/PIT) annually to maintain your TIN's active status must be filed even if that person is not currently operating a business.

This exercise aims to help the IRC allocate resources more effectively by focusing on actual taxpayers. For those in the SME sector, the Small Business Tax (SBT) regime has simplified tax payments and reduced tax rates.

IRC Audit Focus on Management Fees

We have observed numerous IRC audits of management fees. IRC have clearly stated their concerns that management fees are being used as a mechanism to extract profits from PNG either tax free or at 17% Management Fee Withholding Tax (MFWT). So, it's a very good time to make sure that management fees are properly deductible and where they are that MFWT is deducted when necessary.

Some key issues that should be considered are as follows:

- The term "management fee" is widely defined to include "… *consideration for any services of a technical or managerial nature and includes payments for consultancy services, to the extent the Commissioner is satisfied those consultancy services are of a managerial nature…*"
- The deductibility provision for payments to "associates" require that the payment be incurred, and the Commissioner is satisfied they do not have a "…*purpose or effect of avoiding tax* ….".
- Where no Tax Treaty applies the deductibility of fees to associates is limited to the greater of 2% of gross income or allowable expenses.
- Where a Tax Treaty applies the deductible fees can exceed the 2% threshold provided it is justified and supported as on an arm's length basis. The IRC are vigorously challenging this aspect. It is therefore essential that proper justification and records are available to support the charges and the arm's length basis for charging. This includes Management Service Agreements, Invoices and supporting documentation and evidence of the services being provided and related party costs being incurred. In addition, there should be a transfer pricing study to determine the basis of the charge, selection of methodology for pricing, a benchmarking study and justification for any mark up being used. These should be updated regularly.
- MFWT applies at the rate of 17% to deductible management fees. The rate is reduced to 10% in the case of three Treaties, 15% in the case of 1 Treaty and nil in the case of the other 6.
- The IRC have indicated that they are still looking to renegotiate Treaties to ensure MFWT applies.

One thing is evident, the IRC have a focus on challenging management fees and in responding, it has been problematic conveying to the IRC the essential nature of the services provided from offshore. Consequently, we strongly recommend that the justification and documentation is in place. Of course, this is also the case for supporting the income in the country providing the services.

Please don't hesitate to contact us if you would like to discuss this further.

Visa Application go Digital: Paper and Email Submissions End

The Papua New Guinea Immigration and Citizenship Service Authority (ICSA) has launched the Sponsor Portal, a new online platform that combines work permit and working resident visa applications into one single process. Companies can now apply and pay fees online, track visa statuses, and receive alerts when visas near expiration.

This platform will eventually replace separate work permits with a single working resident visa, streamlining the hiring process for foreign nationals. Registration is available for one-time fee of USD 25, with an additional USD 75 per application.

To access the Sponsor Portal, companies need to register on the immigration website (www.ica.gov.pg).

Proposed Changes to the Australian Capital Gains Tax (CGT) Regime for Foreign Residents

The Australian government is considering significant changes to the capital gains tax (CGT) regime, specifically targeting foreign residents. These proposed modifications, outlined in a consultation paper and exposure draft legislation released by the Australian Treasury, aim to expand the scope of taxable assets, and enhance compliance measures.

Key Proposed Changes:

1. **Expansion of Taxable Assets:** The proposed changes aim to clarify and broaden the types of assets on which foreign residents are subject to CGT. This includes assets with a close economic connection to Australian land and natural resources, such as:
   A. Leases or licenses to use Australian land, including pastoral leases.
   B. Australian water entitlements.
   C. Infrastructure and machinery on Australian land, including energy and telecommunications infrastructure, transport infrastructure, and heavy machinery used in mining operations.
   D. Options or rights to acquire such assets; and
   E. Non-portfolio membership interests in entities deriving more than 50% of their value from the above assets.
2. **Amendment to the Principal Asset Test (PAT):** The PAT, used to determine the applicability of CGT on indirect Australian real property interests (IARPI), will be modified to include a 365-day look-back period. This adjustment ensures that if more than 50% of an entity's asset value is attributable to taxable Australian real property (TARP) at any time during the preceding year, the interest will be subject to CGT.
3. **Notification Requirement for Large Transactions:** Foreign residents disposing of shares or membership interests exceeding AUD 20 million will be required to notify the Australian Taxation Office (ATO). This measure aims to enhance transparency and compliance in large transactions.
4. **Changes to the Foreign Resident Capital Gains Withholding (FRCGW) Tax Regime:**
   A. The withholding rate will increase from 12.5% to 15%.
   B. The current AUD 750,000 threshold for applying FRCGW will be removed, making all transactions subject to withholding, regardless of the transaction value.

Implications:

These changes, set to take effect for CGT events occurring on or after 1 July 2025, represent a significant tightening of the tax net around foreign investors in Australia. The government's objective is to ensure that gains on assets with a substantial economic connection to Australia are appropriately taxed. This initiative is expected to increase government revenue by AUD 600 million over five years from 2023-24, and an additional AUD 150 million from the enhanced withholding tax measures over four years to 2026-27.

For investors from Papua New Guinea and other non-residents with interests in Australian property or infrastructure, these changes could introduce new complexities. It is advisable for such investors to seek professional tax advice to understand the potential impact on their investments.

CGT Papua New Guinea

While the Australian CGT regime is being tweaked, there remains no capital gains tax regime in PNG. This includes whether the capital gain is derived by residents or non-residents, on assets in PNG or abroad and regardless of whether derived by individuals or corporates. This represents a large gap in the PNG tax net. While a CGT regime was initially proposed as part of the Income Tax Act Rewrite, this has been restricted such that it is now proposed to only apply to direct and indirect interests in resource licences and information and nothing else.

Reminders: Tax & Statutory Compliance

- August 2024 Salary & Wages Tax (SWT) return due on 7th September 2024.
- August 2024 Goods & Services Tax (GST) return is due on 21st September 2024.
- Other withholding taxes for August 2024 are due on 21st September 2024.

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