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Changes for Management Fee Withholding Tax

The IRC has announced that effective 1 February, there is a significant change in their interpretation and administration of the taxation of management fees payable to non-resident entities.

The announcement has been made through a public notice and some updated language on the IRC's website. Essentially, the IRC states their view that a number of PNG's double tax agreements have been misinterpreted by the IRC in the past. Their view is now stated that management fees payable to most of the countries with which PNG has double tax agreements will be subject to withholding tax. Of particular note are the treaties with Australia, New Zealand, Singapore and Canada. For these countries, the IRC expects that withholding tax of 17% will be imposed. For management fees payable to the UK, Malaysia, Indonesia and Fiji a management fee withholding tax of 10% is imposed. The IRC's view of the interpretation of the application of the double tax agreements with China, South Korea and Germany is that management fee withholding tax does not apply to payments to these jurisdictions.

The IRC public notice does not contain a technical analysis for the change in interpretation. It should be noted that this interpretation may give rise to double taxation of management fees, which is what most of PNG's bilateral tax treaties seek to avoid.

The notice also reinforces that for a management fee to be an allowable deduction for the PNG entity making the payment, it should meet the criteria imposed through the application of Section 68AD or Section 155M. These provide for a deductibility limit unless the taxpayer is able to demonstrate that a management fee paid to an associated entity is determined on an arm's length basis.

The impact of this change in interpretation is expected to be significant and to have flow on effects with respect to areas such as tax clearance. We recommend that taxpayers consider the new interpretation, including the technical merits of previous and current IRC positions in order to determine their response.

If you would like to know more about this development or have any other questions, please get in touch with your usual PwC contact.

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