



**March 2020**

### **Salary or Wages Tax Amnesty**

The Salary or Wages Tax (SWT) amnesty announced through a press release in December 2019 continues to be open for taxpayers through to 31 March 2020. The program is relevant for consideration by all taxpayers that may have outstanding items associated with their compliance with SWT provisions. When released, the IRC acknowledged that there would be an opportunity to allow taxpayers a full remission of penalties in some circumstances, and in other circumstances, 90% remission of penalties. The general preconditions for the application of the amnesty included:

- All SWT returns must be up to date.
- The payment of the base tax owing in relation to SWT returns should be made as a cash settlement.
- The amnesty would not apply to any amounts determined in the course of an IRC audit.

Issues such as the interaction of the amnesty with a penalty remission request lodged previously and the extent to which penalties arising from delays in processing CR1 forms fall within the scope of the amnesty in essence remain subject to the discretion of the Commissioner General. As payment will be required to be made by 31 March in order to qualify for the amnesty, investigating the application of the IRC's positions on a taxpayers' SWT accounts should be a priority in the coming weeks.

### **Income Tax Rewrite in Focus: Taxation of Non-Residents**

As foreshadowed in our [February 2020 Special Edition Pulse](#), a number of aspects of the proposed rewritten *Income Tax Act* (the **Proposed Act**) appear to be policy shifts, rather than a mere simplification of the Act. As the Proposed Act is analysed we will provide a spotlight on some of these policy areas. At this stage of the consultation process, we note that there is no scheduled commencement date for the Proposed Act. We also note that given the significance of some of the policy shifts and the potential impact on PNG's revenue collection (for which costings have not been released) we expect many of these changes to give rise to vigorous discussion in the coming months.

In this Pulse our focus turns to the proposed policy shifts in the taxation of Non-Residents to help clarify any misunderstandings or concerns.

#### *Current regime*

Under the current *Income Tax Act* - which is still in force - non-residents are subject to a number of withholding taxes, including foreign contractor withholding tax (**FCWT**) and management fee withholding tax (**MFWT**).

Broadly, MFWT applies at a rate of 17% to payments to non-residents where services are performed offshore, whereas FCWT applies at a rate of 15% on gross payments to non-residents for payments on a prescribed contract which includes, amongst other things, the provision of services in PNG. After changes implemented in 2017, non-residents within the FCWT system are unable to lodge an income tax return to pay tax on taxable income (i.e. on a net basis) and therefore FCWT operates as a final tax.

Typically tax treaties limit the application of FCWT to circumstances where the non-resident of a tax treaty country has a permanent establishment (**PE**) in PNG. For MFWT, tax treaties often eliminate its application altogether except where the payment is to a recipient that is tax resident in a country where a specific tax treaty includes a withholding tax for technical services.

#### *Proposed regime*

The Proposed Act looks as though it is returning the taxation rules of non-residents of PNG to a more traditional regime, with some modernisation, namely:

- Modernising the definition of PE to align it with changes suggested by the OECD's Base Erosion and Profit Shifting movement;
- Levying income tax at a rate of 30% on the net taxable income of the PNG PE of the non-resident as well as, in effect, a branch profit remittance tax, which is the equivalent of a dividend withholding tax rate (currently 15%). Under these changes the non-resident effective tax rate will align with a PNG resident company of 40.5%;
- Limiting the application of withholding tax to certain payments of deemed PNG sourced income to non-residents who do not have a PE in PNG. Included within these categories are payments for technical fees (for a broad range of services), natural resource payments and a number of traditional payment types (interest, dividends and royalties); and

The Proposed Act will continue to recognise the existence of tax treaties in the taxation of non-residents, however will implement a "treaty shopping" anti avoidance provision to limit the impact of a treaty in certain circumstances. Practically this means that the treaty definition of PE and business profits articles will continue to inform the taxing rights of PNG and the application of withholding taxes.

The practical impact of the changes is likely to result in a move away from withholding taxes as a tax collection mechanism in PNG to corporate income tax for non-residents operating in PNG. This is a reversal of the intent of the changes to FCWT in 2017, as such it is likely that this will be an area of extensive focus in the coming months.

As no commencement date has been announced for these changes there may not be any meaningful immediate action for taxpayers. However, one pragmatic course of action may include considering existing contractual arrangements and payments to ensure that they are well placed to adapt in the event of change.

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

#### **For more information, contact:**

Peter Burnie

Partner

[peter.burnie@pwc.com](mailto:peter.burnie@pwc.com)

© 2020 PricewaterhouseCoopers. All rights reserved.

PwC refers to the Papua New Guinea member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.