

## September 2019 - Special Edition

### Salary and Wages Tax Crackdown

The new Acting Commissioner General for Taxation, Mr Sam Koim issued a press release on 24 September outlining a crackdown on “breach of trust” and “criminal conduct” by companies who have been withholding salary and wage tax (**SWT**) from its employees but not remitting the funds to the IRC. Mr Koim, who also appeared on television to announce the crackdown, noted that in order to stop this “growing trend” he would look to pursue criminal penalties against officers and directors of any companies engaging in this practice.

### Immediate Suspension of Transfer of GST Credits to Offset SWT liabilities

In the same press release as noted above, the Acting Commissioner General tied the underpayment of SWT liabilities to taxpayers who have legitimately transferred GST credits to offset SWT liabilities:

*In the past, the taxpayers have been allowed to use GST credits to offset their salaries and wages taxes pursuant to section 91(5) of the Goods and Service Tax Act 2003. Well that provision grants the Commissioner General, discretion to allow such to happen but this has been abused hence it is my considered position that from this day on, I will not allow any Salaries and Wages Taxes to be offset with GST credits. It has produced impunity for theft instead of genuine compliance. Those who steal salary and wages taxes off their employees' taxes to fund their operations will not seek cover under such provisions.*

*GST credits can be used to offset future GST obligations or will be refunded (which will take 8 years) but not SWT. I have issued circular instructions to all my staff for this direction to be implemented effectively as of this date.*

Whilst we await details of how this administrative position will practically play out, we can assume that any credit transfer forms (CR1 forms) submitted to offset SWT liabilities after 24 September 2019 are unlikely to be processed. This may have a significant impact on taxpayers who have material GST credit balances that the IRC has not refunded in the past, where taxpayers were encouraged to lodge CR1 forms to offset their SWT liabilities. It likely means that all future SWT payments will need to be remitted by cash payments.

We note that subsection 91(2) of the *Goods and Services Tax Act 2003* only provides that no refund shall be made after 8 years of the expiration of the tax period to which it relates whilst it would seem subsection 91(1) suggests a refund is due when there is an excess over an assessed amount.

There still remains a number of administrative questions that taxpayers will face, and will need to work with the IRC to resolve, including:

- Whether unprocessed CR1 forms lodged prior to 24 September 2019 using GST credits to offset SWT liabilities will still be processed;

- Whether taxpayers still correcting IRC errors on their statements of account resulting from changes to its tax administration system in 2013 will be allowed to retrospectively utilise GST credits to offset SWT liabilities for liabilities arising prior to 24 September 2019; and
- Whether taxpayers should be immediately applying for a refund of GST credits for historic balances, as well as on a monthly basis going forward, to try and minimise the cash flow impact of having outstanding GST refunds with the IRC, particularly in light of the Acting Commissioner General's comment that refunds may take up to 8 years to be issued.

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

**For more information, contact:**

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