

Revised Company Tax return

The PNG Internal Revenue Commission (IRC) recently revised the format of company tax return applicable for 2012 tax year.

The following statements/notes are newly inserted into the return –

1. Profit and Loss Account Statement
2. Revised Taxable Income Reconciliation Statement
3. Calculation of Tax Payable Statement
4. Statement No.14 – Overseas Transactions/ Foreign Source Income
5. Statement No.15- Losses Incurred/ Losses Carried Forward
6. Revised Notes for Guidance
7. PNG- International Dealings Schedule along with Instructions.

The statements mentioned under 1, 2 and 3 above are inserted to align the tax return to the proposed tax management system by allotting codes and thereby ensuring faster processing of the income tax assessments.

Statement No.15 is introduced to track the utilisation of prior year losses.

Revised notes for guidance seek to clarify various matters and provide guidance to the tax return preparer. Some of the notable items are clarification on the definition of company, Associated Persons, Agents/Trustees etc.

The most important change relate to the reporting of International Dealings under Statement No.14 and detailed PNG- International Dealings Schedule. In the following sections we will discuss the impact of this change to the taxpayers.

Arm's Length Principle

PNG's income tax legislation provides the Commissioner General with wide powers to adjust the taxable income of PNG taxpayers where he

believes that a taxpayer has conducted non-arm's length dealings, with international related parties.

The tax law operates to discourage non-arm's length dealings under international tax agreements entered between a PNG entity and foreign entity. It deems the consideration, in respect of the supply or acquisition of property, to be equal to the arm's length consideration for "all purposes of the application of the Act" in relation to a taxpayer, if all the following conditions are met:

- the taxpayer has supplied or acquired property under an international agreement; and
- the Commissioner General, having regard to any connection between any two or more of the parties to the agreement or to any other relevant circumstances, is satisfied that the parties to the agreement, were not dealing at arm's length with each other in relation to the supply; and
- consideration for the supply was received or receivable by the taxpayer in respect of the supply but the amount of that consideration was less than arm's length consideration in respect of the supply; and
- the Commissioner General determines that this subsection should apply in relation to the taxpayer in relation to the supply,

The Commissioner may require the taxpayer or any other person to produce any documents for examination which he considers necessary for the purpose of obtaining full information in respect of his income.

Where it is not possible or practical for the Commissioner General to ascertain the arm's length consideration, he has got powers to determine an amount which is deemed to be the arm's length consideration in respect of the supply of acquisition of the property.

The [Double tax Agreements \(DTAs\)](#) entered by Papua New Guinea enshrine the arm's length principle under the "[Business Profits](#)" and "[Associated Enterprises](#)" articles however the articles do not indicate priorities as to the methods to be used to determine the [attribution of profits or an arm's length price](#).

The [Practice Statement PS01/2005](#) issued in 2006 provides that where under the Business Profits or Associated Enterprises Article, the partner countries have provided for acceptance of the arm's length principle any payment of management fees will not necessarily be limited to statutory limit (currently 2% of total assessable income or allowable deductions) however it does not prescribe any acceptable methods for determining the arm's length consideration.

[Taxation Circular No.2011-2](#) issued last year reiterates the Commissioner's power of determination and [prescribes the acceptable method of determining an arm's length consideration](#). These methods are fully consistent with the OECD guideline. The circular also highlights the importance of transfer pricing documentation. A copy of this circular is available at the IRC website (<http://irc.gov.pg/circulars.html>)

Transfer Pricing Documentation

In exercise of his powers the Commissioner has issued the revised company tax return and asked companies to report their international dealings.

The selection is done based on a [de-minimus rule](#) which requires that where in a year any company carry out [more than PGK100, 000](#) in related party dealings (excluding capital value of loans) or [more than PGK2, 000,000](#) in related party loans or advances, it is required to provide the details of international dealings by completing Statement 14. The transactions should be carried out using [one of the OECD's approved pricing methodology](#) or any other acceptable basis.

For companies who satisfy the de-minimus rule and lodge the required information are likely to be called upon to provide further details.

Where a taxpayer [indicates that no method is used](#) then the Commissioner is likely to exercise his powers and determine an [arm's length price](#)

Hence it is important that companies [document how the transfer prices have been determined before they lodge their 2012 income tax return](#) since adequate documentation is the best way to demonstrate that the transactions are carried out in non-arm's length basis.

Contact us

Email shishya.png@shishya.net to find out how we can assist your company with Transfer Pricing Analysis, Transfer Pricing Documentation and Tax returns.