

## PAPUA NEW GUINEA- INDONESIA TAX TREATY

Papua New Guinea (PNG) and Indonesia recently signed a joint agreement to promote trade and cooperation and we saw a large PNG delegation visiting Jakarta under the leadership of Prime Minister Peter O'Neill. The long concluded tax treaty between the two countries will finally see end of tunnel. It is expected to be ratified soon and become a law. Our newsletter aims to highlight the salient feature of this treaty.

### "Basic principle"

- A tax treaty overrides the domestic tax provisions excepting where it is inconsistent with general anti-avoidance rules and transfer pricing provisions.
- In order to obtain benefits under a tax treaty, a taxpayer has to be tax resident in either of the treaty country.
- A taxpayer is taxable in a treaty country only if his business activities give rise to a Permanent Establishment. This rule does not apply to passive income such as dividends, interest, royalty, technical fees, etc.

### "Taxes covered"

The treaty only applies in relation to both countries income taxes. The PNG income taxes which are covered by this agreement are income tax, salary or wages tax, additional profits tax, dividend withholding tax, foreign contractor withholding tax, management fee withholding tax, business payments tax and interest withholding tax.

### "Permanent Establishment (PE)"

Some of the activities rendered by a resident of one country in another country and subjected to tax earlier may be exempted now since they are **excluded** from definition of PE, such as –

- Building site, or a construction, installation or assembly project and related supervisory activities completed **within 120 days**;
- Furnishing of technical, managerial or consultancy services by an enterprise through its employees or other personnel, in relation to

same or connected project, for a period or periods **aggregating 120 days or less, in a 365 day period.**

### "Business Profits"

The treaty allows both countries to tax the business profits made by an enterprise though it is not attributable to a PE of that enterprise. This is in cases where the enterprises sells same of similar goods or merchandise, or carries on same or similar kind of business activity, as effected by the PE.

### "Dividends"

Dividends paid by residents of either country will be now subjected to a reduced withholding tax rate of 15%.

### "Interest"

Interest paid to a resident of other state will be now subjected to a reduced withholding tax rate of 10%. No tax will apply where the lender is a Government of either country.

### "Royalty"

Royalty paid to an associated entity resident in other state will be now be subjected to a reduced withholding tax rate of 10%.

### "Technical/Management fee"

The treaty contains a separate article for technical fee and subject's payment of technical fees to 10% withholding. Technical fees include technical, managerial or consultancy fees but exclude payment of any kind to employees.

### "Independent Professionals/ Consultants"

Where an individual resident of one state provides services in other contracting state in his own capacity then he will be liable to tax, only if any one of the following conditions are met–

- He has a fixed base regularly available to provide services
- He spends 183 days in any twelve month period.

This exemption rule does not apply to entertainers/sportspersons.

#### [“Expatriate employee”](#)

An Expatriate employee providing employment will not be liable to tax in that other country, if any of the conditions are met-

- He spends 183 or less days in any twelve month period
- Remuneration is paid by his non-resident employer
- Remuneration is not borne or deducted in arriving income of the PE of the non-resident employer.

This exemption rule does not apply to entertainers/sportsperson

#### [“Entertainers or Sportsperson”](#)

Entertainers or Sportsperson are liable to tax in the other country from services income earned except where any special programme of cultural exchange is agreed upon between the Governments of both countries.

For e.g. Indonesian athletes participating in 2015 Pacific Games are exempt from PNG tax on any income earned from their participation in such games.

#### [“Non-discrimination”](#)

The treaty contains a non-discrimination clause which provides that an enterprise can apply for getting taxed at same rate in other country, at which nationals of that country are taxed provided their circumstances are similar. This will be of particular importance to foreign companies.

#### [Entry into Force](#)

The treaty will come into force once the parliaments of both countries have ratified the agreement and it is gazetted. We understand that the tax treaty is now in PNG parliament and awaiting ratification.

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#### Disclaimer

This newsletter is prepared to provide a general overview of the PNG Indonesia tax treaty and is not meant to be an expert document. The author does not accept any responsibility to any person for any statement, opinion, omission or error.