TAX ALERT –FCWT

04/2017

Overview

This newsletter presents you with a brief summary of the Foreign Contractor Withholding Tax (FCWT) regime currently applicable in PNG. It incorporates the recent amendments introduced in recent budget. At the end of the letter, we have included a section for commonly asked questions (Q&A) and hope you will find it useful reference.

Who is liable to FCWT?

Any person (whether resident or foreign corporation) who is party to a prescribed contract and not an excluded person, is liable to FCWT. Such persons are referred as "Foreign Contractors"

What is the rate of Tax?

15% of gross income derived from a prescribed contract.

What is Prescribed contract?

The following activities are prescribed under the act-

(a) the installation, maintenance or use in PNG of substantial equipment or substantial machinery; or

(b) the construction in PNG of structural improvements or other works, including (i) the construction of roads, including bridges, culverts or similar works forming part of a road;

(ii) the erection of buildings, fences or similar improvements;

(iii) the clearing or draining of land;

(iv) the construction of ports or port facilities;

(v) the construction of facilities for the provision of water, light, power or communication; and

(vi) the provision or improvement of transport facilities of any kind; or

(c) the use of, or right to use, in PNG, any industrial, commercial or scientific equipment including any machinery or apparatus or appliance, whether fixed or not, and any vehicle, shipping vessel or aircraft,

(d) the provision in PNG of professional services or services as an adviser, consultant or manager.

Who are Excluded persons?

The following persons are not liable to FCWT though they may be party to prescribed contract -

- Resident company
- A resident person, who is ordinarily resident of PNG.

- A person who derived a salary or wages income
- A person who derives a management fee

What is Excluded income?

The following income are generally considered excluded income-

Offshore income

Generally under the common law rules, any offshore income derived by a non- resident is not liable to tax in PNG however the Act deems all income derived from a prescribed contract to have a source in PNG. This means that where a non-resident derives both offshore and onshore income from a prescribed contract, the gross contract income will be liable to FCWT. However where the entire income under a contract is derived offshore, no FCWT shall apply.

Personal services income

As detailed in Taxation Circular TC2013/1 where individuals are providing personal services on a routine basis over a period of time, they are likely to be most likely subject to Salary or Wages tax[1].

Where the services are wholly or substantially provided from outside PNG and the individual's services are ancillary to a contract (prescribed or not), then MFWT or FCWT may apply instead of SWT.

When does the tax apply?

When a resident agent makes payment to foreign contractor under a prescribed contractor, he is required to deduct FCWT.

Who is a resident agent?

A person who is carrying on business in PNG and is party to a prescribed contract.

Obligations of Resident Agent

A resident agent acts as a **LADDER** (Lodge-Apply-Defer-Deduct-Ensure-Remit) between the foreign contractor and the IRC, in the following manner-

- **Lodges** a signed copy of contract or invoices with the IRC within 14 days:
- **Applies** for an Income Tax File number in relation to the Foreign Contractor;
- **Defers** from making payments to the till a formal determination is obtained;
- **Deducts** the prescribed FCWT from the payments made to foreign contractor;
- **Ensures** that the tax forms (F1/F1) are completed and lodged with IRC
- **Remits** the FCWT deducted using the tax file number allotted within 21 days from end of month in which such payment was made.

[1] Taxation Circular TC 2013/1

Q&A

We have put together some of the commonly asked questions based on our interactions with our clients, businesses and IRC.

We have secured a contract in PNG and they fall under the "prescribed activities" meant for foreign contractor. Is there any way we can claim exemption?

If PNG has entered into tax treaty with your country of residence, and the above activities do not give rise to PE, as per the treaty clauses, then no FCWT may apply. However it is necessary to make an application to IRC seeking such exemption.

If the PNG resident agent, we enter into contract with, do not lodge the contract with IRC nor makes any deduction from our payment, are we still liable to IRC in any way?

FCWT is your primarily responsibility and a debt owed to the PNG government. Where the resident agent has deducted the tax, but failed to remit to IRC, you may not be liable provided you can substantiate your claims.

Are we able to claim foreign tax credit for the FCWT in our country of residence?

Generally yes, however there may be limitation on how much you can claim. Where your country of residents exempts such income from tax, you may not be able to claim foreign tax credit.

If our activities in PNG do not give rise to PE, are we still liable to taxes, other than FCWT?

Where there is no PE, IRC may consider the application of other articles of the tax treaty such as Royalties & Technical fees, Dependent personal services and Independent personal services, to determine application of other taxes.

We have obtained approval to pay FCWT on actual assessment basis, by filing of tax returns? How does the new law affect us?

From 1 January 2017, the option allowed to the foreign contractors to lodge returns under the actual basis of assessment, no longer applies. However your business is allowed to lodge all the outstanding returns until 31 December 2016, and obtain assessment.

We have adopted a substituted accounting period (period ending on a date other than 31 December)? How does the new provision affect us?

This will depend on whether you have opted for "deemed" or "actual" basis of assessment.

In case you have opted for "deemed basis", than all payments after 1 January 2017 will be subject to 15% (new rate), whereas earlier ones will be subject to 12% (old rate).

In case you have opted for "actual basis" of assessment, you may need to prepare a return for period until 31 December 2016, and withhold tax at new rate, for payments made, post that period.

What are the factors that needs to be considered by the resident entity entering into a prescribed contract, post 1 January 2017?

For a PNG resident entity, the cost of engaging a foreign contractor may increase, where the existing contract provides for remuneration payable, net of taxes.

Going forward, they may like to negotiate the prices or change the terms of payment (net basis to gross basis).

I am an individual consultant working for a PNG customer and my stay in PNG do not exceed more than 180 days. Do I need to bother about FCWT?

FCWT may not apply to you however you may be subject to Salary or Wages Tax. If your country of residence has a tax treaty with PNG then you may claim treaty exemption.

HOW CAN SHISHYA HELP?

We have experienced team of professionals who can assist you in following **AREAS** -

- **Analyse** your contracts and identify if they are prescribed contracts.
- **Review** tax clauses and advise you on the implications from the new rule.
- **Ensure** that necessary processes are in place, to identify the prescribed contracts, lodge them with IRC, deduct and remit taxes and lodge returns.
- **Assist** with seeking a formal determination of FCWT and in making a submission for tax exemption and
- **Support** your company by providing ongoing advice and training

If you want to know how the above changes affects your entity or want to get more information on this newsletter please contact Hari by email at hari.mettupatti@shishya.net