



## **FOREIGN CONTRACTOR WITHHOLDING TAX INTEGRITY PROJECT**

### **Background**

For some years, taxpayers have written to the Commissioner General seeking registration of individuals for Foreign Contractor Withholding Tax (“FCWT”). In many cases these registrations have incorrectly been approved.

Over the past several years, a practice has become common where taxpayers seek to rely on the non-discrimination clauses within several of PNG’s DTA’s to achieve the best outcomes – adopting the simplicity of a withholding tax effectively applied on their gross income (without reference to their actual income, expenses or net profits) but also wanting to adopt their own reduced rate in purported reliance upon the DTA. The Commissioner General will no longer accept this as an appropriate method of relieving potential discrimination.

### **FCWT Integrity Project**

Given the ongoing confusion over the application of the FCWT provisions and inconsistent treatment by officers of the IRC over several years, the Commissioner General has recently commenced a project to review all current taxpayers registered for FCWT with a view to removing those who have been incorrectly registered and contacting taxpayers where SWT or MFWT provisions appear to have been overlooked.

The project will be conducted in several stages and will cover the following matters:

1. Notifying both taxpayers and withholding agents of the need for all withholding under FCWT to be levied at the rate of 12%. This will apply to all payments made to contractors from the earlier of 16 September 2013, or the date of notification;
2. Reviewing all taxpayer files to ensure that entities are generally registered for FCWT while individuals are registered for SWT (unless this position is altered under a relevant DTA), thereby ensuring that withholding agents are imposing WHT under the correct regime;
3. Reviewing all taxpayer files involving entities to consider whether MFWT or FCWT are the most applicable form of WHT. Where under the terms of the contract it appears that MFWT is the more appropriate regime, both the taxpayer and the withholding agent will be advised accordingly; and

4. Reviewing all taxpayer files involving entities to consider whether those entities are meeting their other tax obligations in PNG, in particular SWT. Where entities are identified as performing services in PNG under the terms of the contract, consideration will be given to whether they are also registered for SWT and if so, whether the amounts remitted appear realistic. Where there are concerns, the IRC will write to the foreign contractor asking them to review their compliance with those other tax obligations.

Where taxpayers respond with a voluntary disclosure accompanied by payment of the outstanding tax within the timeframes set out in the letter, all penalties will be waived. Where there remains tax outstanding and a taxpayer does not make a voluntary disclosure, then the matter will be referred to Tax Audit and penalties will be levied at the full rates applicable: a 20% flat penalty followed by a 20% p.a. for the time the amount remains outstanding.

### **Taxation Circular on the Administration of FCWT**

To facilitate greater clarity within the community and to provide greater guidance and direction to IRC officers, the Commissioner General is currently developing a Taxation Circular on the administration of FCWT. This Circular will consider:

- What is a “Foreign Contractor”
- How the Commissioner General will apply the provisions where other withholding tax regimes may also apply?
- What is the appropriate rate of withholding? and
- How will the Commissioner General give effect to non-discrimination clauses in double tax agreements entered into by the Government of Papua New Guinea?

The Commissioner General reiterates the position in *Taxation Circular TC 2013/1* that where individuals are providing personal services on a routine basis over a period of time, in all but exceptional circumstances they will be subject to salary or wages tax.

### **Consultation**

The Commissioner – General intends to adopt an abbreviated consultation process for the development of this Taxation Circular which will involve an invitation to a round table discussion to representatives of the Big 4 accounting firms and certain other tax professionals. If you would like to be included in this consultation process, please email [TaxCircularsConsultation@irc.gov.pg](mailto:TaxCircularsConsultation@irc.gov.pg) to express your interest.

Taxpayers and their agents are encouraged to contact Doris Mikai on 322 6530 if they require any further information regarding this project or if they wish to make a voluntary disclosure.