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Papua New Guinea

Tax Alert

Income Tax Act Rewrite Series – Topic 11

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This is the eleventh of our series of Special Alerts summarising the major proposed changes under the Income Tax Act rewrite. In this alert we focus on the Tax Administration Act 2017 (TAA). Although already enacted, it is only due to come into effect, at least in part, from 1 January 2021.

Tax Administration Act 2017 (TAA)

The TAA was certified in August 2018. It is part of the overall reform and modernisation of the tax legislation in PNG and its enactment foreshadowed the rewrite of the ITA. Both the new ITA and TAA together with the replacement of the SIGTAS system were highlighted in the IRC's Medium Term Revenue Strategy.

It is important that taxpayers and their advisers are aware of the potential implications. Many changes are for the purpose of consolidating, simplifying and modernising the tax laws. However, the Government have also taken the opportunity to take a policy stocktake. In many cases it is not clear whether proposed changes fit into the "policy change" bucket or otherwise. Consequently taxpayers need to be vigilant and be aware of the changes arising.

In this Alert we summarise some of the key changes in the TAA. We stress that this is not intended as a comprehensive outline of the TAA and that changes to the TAA (including the addition of Regulations) and to the tax Acts to accommodate the TAA, are still expected.

Self-Assessment

The TAA is fundamental to the operation of a self-assessment system. The following are deemed to be "self-assessment returns":

a) Income Tax Returns
b) GST returns
c) Departure Tax returns;
d) Gaming Returns.

This should remove the need for IRC to process assessments for these returns. Taxpayers can no longer wait for the issue of a return before paying any further tax due. For example, with income tax any additional tax over and above provisional payments, to avoid penalties, is currently due for payment 30 days after an assessment is issued. Under the self-assessment system tax would become due 30 days after the return is filed. We note the new ITA states income tax is due on the date the income tax return is due to be furnished.

The IRC can still issue default assessments where a return has not been filed.

In the case of GST, GST was designed as a self-assessment tax. However the mechanics to support self-assessment have not been in place. The TAA rectifies that issue.

Tax Identification Number (TIN)

The TAA specifies who must have a TIN, how it should be applied for, how it must be used, and the process for deregistration.

Tax Clearances

How self-assessment will affect the issue of tax clearance certificates (TCC) is not clear. The TAA provides for a prescribed form to be filed, in the circumstances determined by Regulations (yet to be released). Once lodged the IRC are required to either issue a TCC within 14 days or issue a formal rejection.

Representative Persons

The TAA defines a "representative" for a company to include "... the chief executive officer, a public officer, managing director, company secretary or a director ...". Importantly, every representative is responsible for performing any obligations imposed by a tax law including filing of returns and payment of tax. The TAA limits the personal liability of the representative for the tax where there is a priority claim on the company assets or the representative can show that they had "... no knowledge, and could not reasonably be expected to know, of the taxpayer's tax liability". For directors this will need to be counter balanced by their Companies Act responsibilities. Lack of knowledge in itself will not be a sufficient defense.

Tax Records

The existing rules for the maintenance of records is broadly preserved. The records must generally be maintained in English, kept in PNG and retained for 7 years. This period is extended for years from which there remain unused losses. In addition, the records, documents and accounts to be retained are widely defined and include underlying source documents such as invoices, receipts, contracts and customs documentation.

Advance Tax Returns and Advance Assessments

The TAA provides that advance tax returns can be requested where the taxpayer has a reasonable belief that, the taxpayer will not furnish a return or specifically where a person is leaving PNG indefinitely, is about to cease business in PNG, has become bankrupt or has died. Where applicable, payment must be made before the advance return due date, while a liability to lodge a return for the full period remains.

Advance assessments can be made based on the above or based on information the Commissioner General (CG) has available and to the best of his judgment.

Amendment of Assessment

The CG may amend an original assessment based on the information available and to the best of his judgment. In the case of fraud or willful neglect by the taxpayer this may be done at any time. Otherwise it must be done within four years from either the date a self-assessment return was lodged or the date the taxpayer was served with the assessment.

Objections

Broadly the existing objection process has been retained. An objection must be made within 60 days of being served the notice of the tax decision to which the objection relates. However, the TAA places an obligation on the IRC to provide the CG's finding on the material facts and the reasons for a decision. In addition, if the IRC fail to issue a notice of objection decision within 6 months the taxpayer may elect to treat the CG as having made a decision to disallow the objection.

A taxpayer can appeal a decision to the Tax Review Tribunal, or the Commissioner General can designate an objection as a test case. The Tax Review Tribunal is constituted by four member appointed by the Minister overseeing the IRC. There is no longer an option to appeal directly to the National Court. In addition, an appeal from a decision of the Tax Review Tribunal is only allowed to the National Court on a question of law. At present the Review Tribunal (under the Income Tax Act 1959) rarely meets and as a practical matter it is generally preferable to make an appeal to the National Court. It is to be hoped that the Tax Review Tribunal will not face the issues encountered by the Review Tribunal as it is imperative that taxpayers be given a fair opportunity to have an independent and efficient system for hearing of appeals. The alternative is that the Regulators word becomes effectively final. As legislation is not always black and white, taxpayers need a fair opportunity to challenge IRC interpretation. This reform will therefore be a key area to monitor.

Payment of Tax in Dispute

In order to appeal a taxpayer must pay 50% of the full amount of any tax due and payable under the assessment and the full amount of any additional (penalty) tax accruing (and not remitted) on the tax payable. The amount is payable into a trust account, administered by the CG. Failure to pay the tax will invalidate the appeal and the full tax and penalties will be due and payable.

Late Payment of Tax and Late Filing

Interest on late payment of tax will be calculated on a simple interest basis at a rate based on the Central Bank "rediscount rate" plus 5%. This is in addition to a late payment penalty, generally at a rate of 20% of the tax unpaid and a separate late filing fee also at a rate up to 20% of the tax due. This seems to create significantly onerous penalties for even minor delays in making payment.

Additional penalties may also be raised for false or misleading statements as well as avoidance.

The TAA provides extensive tax recovery powers for the Commissioner General.

Tax Refunds

For income tax purposes refundable tax credits are to be offset against tax payable firstly for the same type of tax and if there is an excess against any other unpaid tax. The remainder, unless otherwise directed by the taxpayer, must be refunded within 45 days of the date that the taxpayer filed the tax return. Taxpayers can agree in writing that any refund be offset against future liabilities under any tax law.

If a taxpayer has overpaid income tax, they can apply for a refund, using an approved form and by providing documentary evidence, within 3 years of the date that the tax was paid. The CG is required to serve notice of his decision on the taxpayer within 60 days. The amount of the refund can be offset against tax payable, similarly to refundable tax credits, with the excess required to be paid to the taxpayer within 14 days of the CG issuing its decision.

Special provisions apply to GST. In general, GST refunds are carried forward to offset subsequent GST payable. If a refund is a "regular feature" for the registered person, the CG must upon request refund the negative amount within 28 days after the person lodges the refund request. The request must be in an approved form and lodged within 60 days after the end of the taxable period.

Rulings

Disappointingly the TAA does not provide a mechanism for the IRC to issue binding rulings. In fact the TAA specifically provides that the CG is not bound by any "...guideline, publication, tax circular or other advice (oral or in writing) provided by the IRC...". A binding ruling system is a core requirement for any equitable self-assessment system. A taxpayer needs to be given the opportunity to clarify the law in a way that binds IRC. We understand that it is intended that such a binding ruling system will be legislated but to date no details have been provided.

Electronic Tax Returns

The CG may authorize and in fact require (in certain cases) that various documents including tax returns and payments be filed/made electronically. In addition, the CG may serve documents electronically.

Underestimated Provisional Tax

Where a taxpayer estimates its provisional tax payments and the tax payable exceeds the estimate by more than 20%, the taxpayer is liable to an underestimation penalty equal to (20%*(actual tax payable – (provisional tax paid*120%).

Next Steps

The TAA is scheduled to come into effect from 1 January 2021. However, it now understood that this may be a staggered implementation (see our September 2020 Tax Alert). The TAA contains transitional rules affecting tax obligations arising prior to the introduction of the TAA. The above mentioned changes are potentially significant and taxpayers should take time to ensure they understand the implications.

If you would like to discuss the changes contained in the TAA or the draft changes to the new ITA please contact your Deloitte contact or any of the team listed below.

For more details please contact your key Deloitte contacts or any of the following:

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