

Query 1: Is Management Fee Withholding Tax applicable to payments made by an entity belonging to the same group in Papua New Guinea to a foreign bank 's branch situated outside Papua New Guinea ?

i) **“Management fee”** means a payment of any kind to any person, other than to an employee of the person making the payment and other than in the way of royalty, in consideration for any services of a technical or managerial nature and includes payments for consultancy services, to the extent the Commissioner is satisfied those consultancy services are of a managerial nature;

ii) **196Q. Application. –Division 14C of The Income Tax Act is extracted below :**

This Division applies to a taxable management fee that is paid to a non-resident after 8 November 1989 and that—

(a) is paid by a resident; or

(b) is paid by a non-resident, and—

(i) is, or is in part, an outgoing incurred by that person in carrying on business in Papua New Guinea at or through a permanent establishment in Papua New Guinea; or xxviii

(ii) is not an outgoing incurred by that person in carrying on business in another country at or through a permanent establishment in that other country, but does not apply to a taxable management fee that is paid to a non-resident to the extent that it is derived by the non-resident in carrying on a business in Papua New Guinea at or through a permanent establishment in Papua New Guinea.

iii) **Income Tax Act defines non-resident as** “non-resident” means a person who is not a resident of Papua New Guinea; The term resident of Papua New Guinea has been defined as :

“resident” or “resident of Papua New Guinea” —

(b) in relation to a company other than a superannuation fund, means a company which is incorporated in Papua New Guinea, or which, not being incorporated in Papua New Guinea, carries on business in Papua New Guinea, and has either its central management and control in Papua New Guinea, or its voting power controlled by shareholders who are residents of Papua New Guinea;

iv) The only exception as regards applicability of management fees withholding tax provided by Section 196Q is that this does not apply to a taxable management fee **that is paid to a non-resident to the extent that it is derived by the non-resident in carrying on a business in Papua New Guinea at or through a permanent establishment in Papua New Guinea.**

The term permanent establishment is defined under the Income Tax Act as **“permanent establishment”**, in relation to a taxpayer, means—

(a) a place that is a permanent establishment of the taxpayer by virtue of the definition **“permanent establishment”** in Section 4; or

(b) a place at which any property of the taxpayer is manufactured or processed for the taxpayer, whether by the taxpayer or another person;

Unless this exception is available, **withholding taxes would be applicable as mandated under Division 14 C of The Income Tax Act.**

Who has the locus to object with regard to an assessment pertaining to Salary and Wages Tax under the Income Tax Act, 1959 and who is responsible for making these deductions?

- i) Section 245 which contains the provision governing Objections states that ..Subject to Subsection (2), a taxpayer dissatisfied with an assessment under this Act may, within 60 days after service of the notice of assessment, post to or lodge with the Commissioner General an objection in writing against the assessment stating fully and in detail the grounds on which he relies.
- ii) As per Section 4(1) - **“taxpayer”** means a person deriving income. In the context of these proceedings the applicable tax is Salary or Wages Tax and therefore recourse is had to **Section 65D**-Interpretation which inter alia defines “taxable income” as gross amount of salary or wages income earned or derived without reference to allowable deductions.
- iii) **65G. Liability to pay tax.** A person who derives income to which this Division applies is liable to pay salary or wages tax upon that class of income at the rates declared by Act.
- iv) Section 65 I(3) states that -The Commissioner General may serve on an employer or employee by post or otherwise a notice in writing in which is specified
- v) **“employer”** means a person who pays or is liable to pay any salary or wages, and includes— (a) in the case of an unincorporated body of persons other than a partnership—the manager or other principal of that body; and
(b) in the case of a partnership—each partner, and, except in relation to the imposition of a penalty, also includes the State, an authority of the State or a public authority constituted by or under an Act, a provincial government, a local government body, or a local level government body by whatever name known established by a provincial law; (c) in the case of the payment of a capital amount of any allowance, gratuity or compensation paid in a lump sum under Section 46B, the payer of that amount;

- vi) **“group employer”** means a person who is registered as a group employer under Section 299G and includes, unless the contrary intention appears, a person who is required to be registered pursuant to that section;
- vii) Section 299G(7) categorically states that the Group employer shall be liable to pay to the Commissioner General the amount of tax so determined. The usage of the word “shall” makes it clear that it is not an option but an obligation to be discharged by such employer at the earliest. Such a Group employer has the recourse of pursuing recovery such amount of tax from the respective employee. In the event of the Group employer defaulting in this matter then penal consequences prescribed under Section 299G(9) would be attracted