

DRAFT QUERY 1 :

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 ?

Draft Reply

- 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 Division14 C of The Income Tax Act.**

