

## IRD IT Public Ruling

### IT PR 2019/1 - Income tax: Professional Services and Management Services

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## Protection Label

### **This Ruling provides you with the following level of protection:**

This publication represents the Commissioner's view about the way in which the revenue law applies, or would apply to persons generally or to a class of persons in relation to a particular arrangement or transaction or a class of arrangements or transactions.

You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law that allows it.

## **What this Ruling is about**

### ***Class of person/arrangement or transaction***

1. This Ruling applies to persons that provide professional or management services to persons including companies. The Ruling provides guidance as to what are professional services and what are management services for the purposes of section 38 of Income Tax Act Cap 123 (the Act). That section defines management and professional services for the purposes of the withholding tax provisions for non- residents.
2. The Minister of Finance and Treasury on 1<sup>st</sup> March 2018, pursuant to his power in subsection 37(2)(i) of the Act, issued an Order subjecting the income of professional and management services of a resident person to the withholding tax provisions. This Ruling applies equally to residents providing professional and management services with the proviso that those residents paying provisional tax and/or PAYE withholding are not subject to the resident withholding tax provisions.
3. This Ruling considers the various indicators within the common law meaning of the terms to work out whether a person is providing professional or management services. Persons making payments and persons receiving payments should follow the terms of this public ruling to determine the distinction between professional services and management services.

## **Ruling**

### ***Legislation***

4. Subsection 37(1) provides that a person who pays a resident income to a resident person shall deduct from such gross payment income tax at the appropriate withholding tax rate specified in the Seventh Schedule.
5. Under subsection 37(2)(i) resident withholding tax consists of
  - (i) Income from professional services and;

(ii) Income from management services.

6. Subsection 38(1) of the Income Tax Act provides that a person who pays non-resident income to a non-resident person shall deduct from such gross payment income tax at the appropriate withholding tax rate specified in the Sixth Schedule and that such income is deemed to be derived from the Solomon Islands.

7. Subsection 38(3) of the Income Tax Act Cap. 123 provides that non-resident income subject to non-resident withholding tax includes (b) professional services and (i) income from management services.

8. The rate of non-resident withholding tax for payments for Professional Services is 20 cents (20%) in the dollar and for income from Management Services it is 35 cents (35%) in the dollar.

9. "Income from management services" is defined in subsection 38(2) to mean

"any payment made by any person to any other person or entity where such services are rendered wholly or partly in Solomon Islands or outside Solomon Islands for the provision of industrial or commercial information, advice on management, administration, or control in respect of the operations of any company or entity, to the extent that such payments do not constitute -

(i) employment income; or (ii) reimbursement of travelling or accommodation expenses which are wholly and exclusively incurred in relation to such payment;"

10. "professional services" means

"any payment for professional or technical services or services of an adviser or consultant on behalf of a person or entity resident in Solomon Islands (whether such services are rendered wholly or partly in Solomon Islands or outside Solomon Islands) to the extent that such payments do not constitute -

(i) employment income; or

(ii) reimbursement of travelling or accommodation expenses which are

wholly and exclusively incurred in relation to such payment;

The word payment in this definition includes commissions whether on sales or otherwise.”

### **Distinction between Professional Services and Management Services**

11. When the legislation increasing the rate of non-resident withholding tax for professional and technical experts was introduced in July 2007, the intention was that a professional services payment would mean any payment for professional or technical services of an advisor or services of an advisor or consultant on behalf of a person or entity resident in the Solomon Islands. This is on the basis that these services rely largely on the personal labour or intellectual input of the service provider. This also applies to contractors providing professional or technical services who are not employees or considered to be employees.
12. Professional services are fees charged by individuals specially trained in specific fields of arts and sciences, such as doctors, architects, lawyers and accountants. Professional services payments include commissions whether on sales or otherwise.
13. Whereas management services are fees paid to a person, including a company, for managing a business, property, sum of money etc. on another's behalf.
14. Professional services are more technical in nature and these services are usually applied on specific technical issues related to an organisation. On the other hand, Management services involve the actual oversight and control of the organisation (business processes).
15. The elements to be considered when making the distinction between Professional and Management services includes such matters as, the nature of the service, the timing in which the service is carried out and the relationship that exists between the organisation and the service provider. The terms of any contract should be examined to see the type of service provided. Although the terms of the contract are not necessarily conclusive and each situation will be looked at on a case by

case basis.

16. In cases of services such as payroll system advice and similar services provided by an overseas associated party, these would be considered Management services. If the parties are not associated, then it can usually be concluded that they are not management services.

**Date of effect**

17. This Ruling applies to years of income commencing both before and after its date of issue. This Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the final Ruling.

Joseph Dokekana  
Commissioner of Inland Revenue

Dated 27<sup>th</sup> August 2019

## Appendix 1 - EXAMPLES

18. Anthony is an Australian lawyer who provides tax legal advice to Sol Company Limited. He is engaged on a retainer basis, that is, a fee paid in advance in order to secure Anthony's services as required. The services Anthony provides would be considered to be Professional Services.
19. Peter runs a real estate agency which provides various services. He manages properties for clients and provides advice on management and administration of the properties. Payments for these services would be considered to be Management services. Peter also sells properties on behalf of clients and receives commission payments. This would be professional services under the definition.
20. Ace Payroll Company Limited is a non-resident company of the Solomon Islands. It provides advice on how to set up a payroll system to Ace (Solomon Islands) Limited a related company. The services Ace Payroll Company Limited provides would be considered to be Management services.
21. Ace Payroll Company Limited also provides payroll processing services to Ace (Solomon Islands) Limited. This is considered to be Professional services.

**Appendix 2 - Detailed contents list** -The following is a detailed contents list for this Ruling:

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