

## **PR 2024/8 (previously PR 2019/1) - Income tax: Professional Services and Management Services**

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**PREAMBLE:** This publication is a Public Ruling made under the Tax Administration Act 2022 and applies as an interpretation of provisions in the Income Tax Act Cap 123. The number, subject heading, What this Ruling is about (including Class of person/arrangement section), Date of effect, and Ruling parts of this document are a 'public ruling' for the purposes of section 149 of the Taxation Administration Act 2022 and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner.

### **TAXPAYER PROTECTION**

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

This Ruling sets out how a tax law applies in relation to a type of person or a type of arrangement.

You can rely on this Ruling (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement in this Ruling turns out to be incorrect because of a Court decision 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 Ruling 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 allow 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. It also applies to payments made to 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. Accordingly, 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. The distinction is important as different

withholding tax rates apply to each of them (20% and for professional services and 35% for 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***

#### ***Residents***

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, amongst other income:
  - (i) income from professional services and;
  - (j) income from management services.

#### ***Non-residents***

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:

(i) professional services; and

(j) income from management services.

8. The rate of both resident and 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.

### **Meaning of income from management services**

9. In the Act "Income from management services" is defined in subsection 38(2).

: A payment for management services is a payment for services rendered:

- in whole or in part in the Solomon Islands; or
- outside the Solomon Islands

for the provision of:

- industrial or commercial information
- advice on management
- administration, or
- control of the operations of any company or entity.

It excludes payments for employment income or reimbursement of related travel or accommodation expenses.

10. Payments for management services are often paid to a person, including a company, for managing a business, property, sum of money etc. on behalf of another person. Management services involve the actual oversight and control of the organization and its business processes.

11. Services such as payroll system advice or similar services provided by an overseas entity are usually considered management services, except if the parties are not related.

## **Meaning of professional services**

12. Professional services is defined also in section 38(2).

A payment for professional services is a payment for services rendered:

- in whole or in part in the Solomon Islands; or
- outside the Solomon Islands

for the provision of:

- professional or technical services, or
- services of an adviser or consultant

on behalf of a person or entity resident in the Solomon Islands.

It includes payment of a commission, whether on sales or otherwise.

It excludes payments for employment income or reimbursement of related travel or accommodation expenses.

The definitions also apply to residents

13. Professional 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).

## **The Difference between Professional Services and Management Services**

14. 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.

15. 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.

16. 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.

17. 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).

18. 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;
- the relationship that exists between the organisation and the service provider; and
- The terms of any contract.

19. 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 related, then it can usually be

concluded that they are not management services.

## **DATE OF EFFECT**

20. 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: 31<sup>st</sup> May 2024

## **APPENDIX 1 - EXAMPLES**

21. 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.
22. 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.
23. 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.
24. Ace Payroll Company Limited also provides payroll processing services to Ace (Solomon Islands) Limited. This is considered to be Management services as the companies are related. If the companies were not related they would be considered Professional services.



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

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