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When to withhold RWT and NRWT

Resident withholding tax ("RWT") and non-resident withholding tax ("NRWT") are a withholding tax on income that is passive in nature.

- RWT applies to resident passive income
- NRWT applies to non-resident passive income

When to withhold RWT

1. When a company makes a dividend payment to a NZ tax resident shareholder. The RWT amount is calculated using the following formula:

(tax rate x (dividend paid + tax paid or credit attached)) – tax paid or credit attached

Essentially it is the percentage required to ensure that the combination of imputation credits and RWT add up to 33%.

2. When a person makes an interest payment to a NZ tax resident lender. The RWT rate for most companies (excluding LTCs) is set at 28%, being the company tax rate. For other taxpayers, the rate is usually set by the rate that the lender notifies to the payer, i.e. the marginal tax rates. If no rate is given to the payer, then the no notification rate of 33% must be used.

Exclusions

There are a number of exclusions where RWT is not required to be withheld. The most common are below:

- Dividend is exempt income – for example paid between two wholly owned companies
- Dividend is paid to someone who holds an RWT certificate of exemption
- When paid to another company and the dividend is fully imputed and the paying company chooses not to treat it as subject to RWT
- A dividend paid by a company and derived by another company when both are part of the same group of companies at the time the dividend is paid
- Interest is exempt – for example under a hire purchase agreement

- Interest is paid by someone when not in relation to carrying on a taxable activity – for example shareholders with overdrawn account
- Interest is paid to someone who holds an RWT certificate of exemption
- Interest paid by a company and derived by another company when both are part of the same group of companies at the time the interest is paid
- Where the interest paid is less than $5k in the previous tax year and the person paying the
- interest does not hold an RWT certificate of exemption
- From 1 April 2020, not required to withhold RWT on interest incurred as part of a taxable activity unless the interest is over $5k

When to withhold NRWT

1. When a company makes a dividend payment to a non-NZ tax resident shareholder.

The rate of NRWT can vary widely as it can depend on whether the dividend is fully imputed or not, how many shares the shareholder owns and whether a tax treaty applies.

2. When a person is paying interest to a non-tax resident and that interest has a source in NZ.

The rate of NRWT can vary widely as it can depend on whether a tax treaty applies or if the approved issuer levy regime has been utilised.

3. If the royalty has a source in New Zealand and is paid to a non-tax resident then the royalty will be subject to NRWT.

The Royalty here is a wide definition including but not limited to:

a) The use or the right to us any copyright, patent, plant variety rights, trademark, design or model, plan, secret formula or process or other like property or right

b) The use or right to use a mine or quarry

c) The extraction, removal, or other exploitation of standing timber or a natural resource

d) The use of, or right to use, a film, a videotape, or a tape in connection with radio broadcasting

e) The supply of scientific, technical, industrial, or commercial knowledge or information

It does not matter what the payments are called for accounting purposes (e.g. technical fees, management fees, licence etc.), if they meet the definition of royalty for tax purposes, they will be subject to NRWT.

Under domestic legislation, the rate of NRWT is 15%. It is always important to refer to the applicable tax treaty where available, as most treaties offer a reduced rate of 5% or 10%.

NRFAI

The Non-resident Financial Arrangements Income ("NRFAI") rules have been applying for balance dates starting from 1 July 2018 so are now in force for 30 June balance dates. The new legislation was introduced to address the deferral of NRWT for a non-resident lender for a substantial period while the New Zealand resident borrower continues to claim a tax deduction using the accrual basis under the financial arrangements rules.

Under the new rules, the borrower is required to calculate whether there has been a deferral in the payment of interest for the income year.

NRFAI will arise if:

- The company's total expenditure for the income year on the related-party debt is more than the de minimis amount ($40,000) and the deferral calculation in relation to the financial arrangement is less than 90%, or
- NRFAI was derived from the loan by the lender in an earlier income year.

If you are not sure if you should withhold tax for your dividend, interest or royalty payments, please contact your Walker Wayland advisor for more details.

If you would like to know more or require assistance please contact Kirit or Alannah.

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