



TUVALU GOVERNMENT OFFICE OF THE PRIME MINISTER

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Subject: Obligation on Persons to Withhold or Collect Income Tax at Source

Through recent audits conducted, it has come to our attention that some Employers are not withholding or collecting income tax at source from the withholding income of contractual employees, non employees who are contracted for their services and non residents consultants and contractors.

Section 37(1) of the Income Tax Act states that in relation to employment income tax (PAYE) must be deducted from emoluments. The definition of “**emolument**” is in Section 2(a)

Section 2(a) *Emolument means all amounts payable and the value of all benefits provided in respect of, or in relation to, or arising out of, a relationship involving any person holding a remunerated post or position, and without in any way limiting the scope of the term, unless otherwise provided in this definition, shall include:*

- (a) *any wages, salary, bonus, allowance, leave pay, sick pay, payment in lieu of leave, fees, commission, gratuity, or other lump sum payment (whether or not derived at the conclusion of a period of employment) derived in respect of, relation to, or arising out of the employment of a person;*

Section 9 provides a list of all items of income specifically included within the term '**gross income**'. It also includes emoluments.

Section 37(2) States: *Every person who pays or credits to any non resident any amount of non resident withholding income shall at the time withhold or otherwise collect income tax (being non resident withholding tax) at the rate prescribed in Schedule 5.*

Definitions of key terms

Person includes a **company**, and any executor, administrator of any trust or deceased estate (in their individual and collective capacity as such).

Non Resident means any **person** who at the relevant time, is not resident in Tuvalu.

Non Resident Withholding Income comprises gross income from a source within (or deemed to be within) Tuvalu, which is by way of, or in the form of:

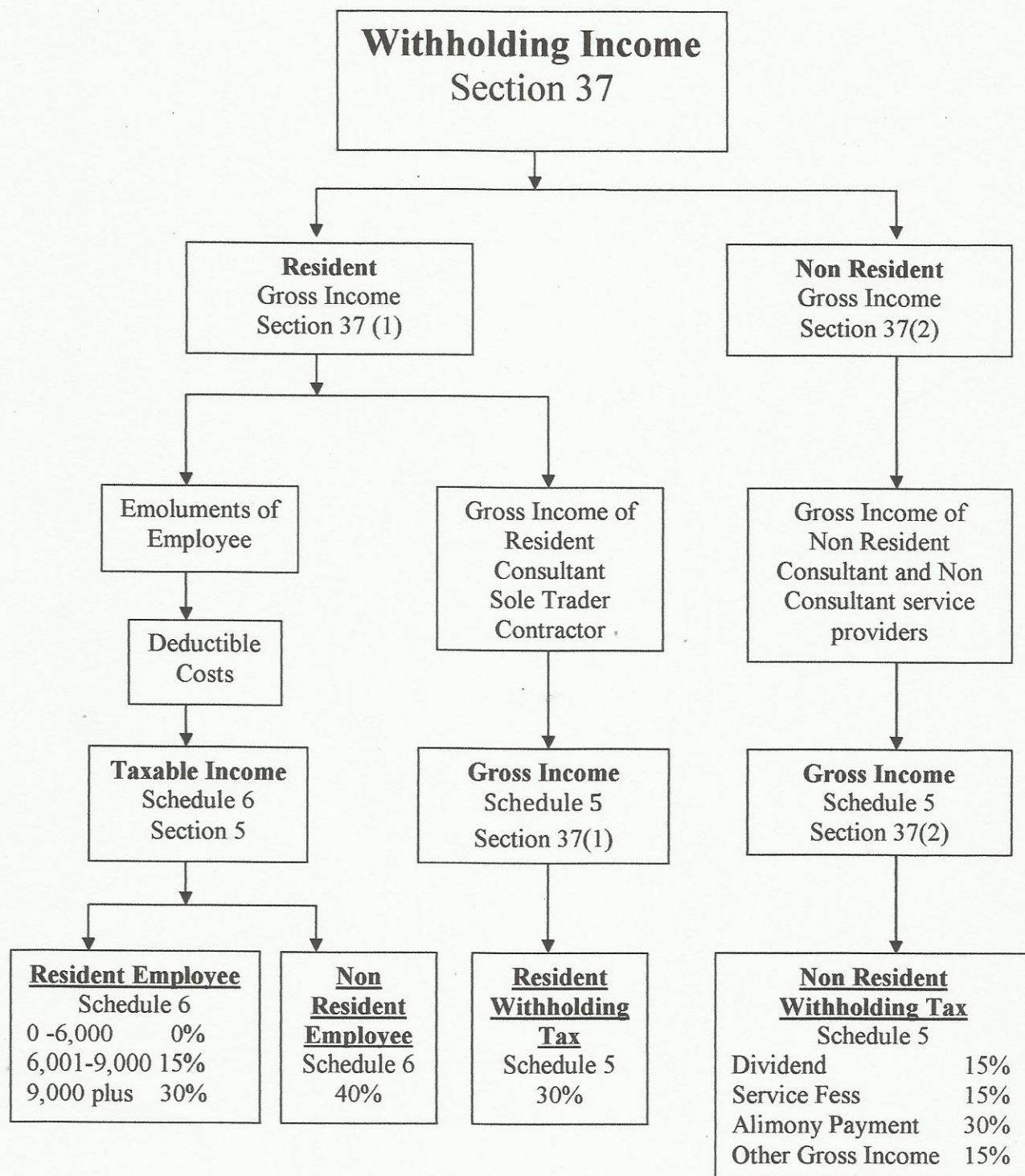
- (a) dividend
- (b) forbearance payment
- (c) interest
- (d) knowhow
- (e) rent
- (f) royalty
- (g) service fees; or
- (h) specified alimony payment,

which is derived by a person who by the derivation, is a non resident, but shall not include any such amount which is exempt income.

Income Tax includes any income tax (including any **non resident withholding tax**) imposed by this Act but shall not include any overseas tax.

Non Resident Withholding Tax is the income tax required to be withheld or collected at the rate specified in Schedule 5 to this Act from or in relation to any amount of non resident withholding income payable.

Flow Chart



Section 37(7) Any person required to withhold or collect shall be **an agent** of the Crown.

Section 37(8) Where any income tax has been withheld or otherwise collected in terms of this section, the person on whose behalf the income tax has been gathered shall be entitled to obtain from the withholder or collector (or their agent or successor in office) documentary evidence of that tax having been gathered and so far as practical, such evidence shall be provided within 7 days of a request being received by the withholder or collector.

Section 37(9) Any income tax withheld shall be credited against the income tax liability of the person.

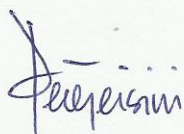
Section 37(10) Where any person fails to account to the Crown within the time prescribed in this section for any amount which was or should have been collected at source:

(a) that person shall be and remains personally liable as agent to pay the Crown the amount to be accounted for;

Therefore, as clearly stated in various key sections above, withholding income is part of a person's emolument meaning it should be included as part of a person's gross income and should thus be taxed as per Sections 5, 9 and 37 and under Schedules 5 and 6 of the Income Tax Act.

Votekeepers and Employers in both Public Enterprises and the Private Sector to please take note of all types of withholding income that should be subject to withholding tax when making payments.

Grateful if all addressees comply with this requirement.



Ms Sania Teisini

For Secretary of Finance and Economic Development