

TAX PAYMENT - WITHHOLDING TAX (WHT)

Withholding Tax Deduction

The Income Tax Act, 1967 provides that where a person (referred herein as "payer") is liable to make payment as listed below (other than income of non-resident public entertainers) to a non-resident person (NR payee), he shall deduct withholding tax at the prescribed rate from such payment and (whether such tax has been deducted or not) pay that tax to the Director General of Inland Revenue **within one month** after such payment has been paid or credited to the NR payee.

All withholding tax payments (other than for non-resident public entertainers) must be made with the relevant payment forms, duly completed, together with copy of invoices issued by the NR payee and copy of payment documents as proof of date of payment /crediting to the NR payee

Type Of Income Subject To Withholding Tax:Withholding Tax On Non-Resident Persons :

Payment Type	Income Tax Act 1967	Withholding Tax Rate	Payment Form Used
Contract Payment	Section 107A (1) (a) & 107A (1) (b)	10% & 3%	CP 37A
Faedah	Section 109	15%	CP 37
Royalti	Section 109	10%	CP 37
Special classes of income: Technical fees, Payment for service, Rent/payment for use of moveable property	Section 109B	10%	CP 37D
Income of non-resident public entertainers	Section 109A	15%	Payment memo Issued by Assessment Branch

For WHT under Section 107A/ 109/ 109B, please ensure that the WHT Forms CP 37A/ CP 37/ CP 37D are completed accurately furnishing the Malaysian tax reference number for the payer, payee as well as the payee's country of origin.

If the payer does not have the reference number of the payee, the payer may request for such number from the:

Director
Non Resident Branch
Customer Services Unit
15th Floor, Block 8A
Government Office Complex
Jalan Duta, 50600 Kuala Lumpur,

stating the full name, address of the payee and the nature of payment.

For urgent payment (where the income tax reference number of the payee is not known), the payer may send the Forms CP 37A/ CP 37/ CP 37D together with the payment, copy of invoice and remittance slip (telegraphic transfer) directly to:

Director
Collection Branch
Withholding Tax Unit
13th Floor, Block 8A
Government Office Complex
Jalan Duta, 50600 Kuala Lumpur

Withholding tax on resident individuals

Payment type	Income Tax Act 1967	Withholding Tax Rate	Payment Form Used
Interest (other than exempt interest) paid by approved financial institutions	Section 109C	5%	CP 37C

Enforcement For Compliance

(Other than for withholding tax on non-resident public entertainers and resident individuals) The following constitutes non-compliance:

1. The payer fails to pay withholding tax at the prescribed rate (whether deducted or not).
2. The payer pays withholding tax late (not within the period of one month after Date of payment / crediting to the NR payee).
3. The payer fails to pay increase in tax imposed on him for late payment of withholding tax or for failure to pay withholding tax.

Enforcement :

Where the payer fails to pay withholding or pays withholding tax late (not within the period of one month after the date of payment / crediting to the NR payee), he is imposed an increase in tax of an amount equal to ten percent of the payment subject to withholding tax deduction.

Example:

Royalty paid to NR payee on 02/06/1999	RM 200,000
Withholding tax received by LHDN on 25/07/1999 later than 02/07/1999)	20,000
Increase in tax imposed on payer (200,000 @ 10 %)	20,000

Where the payer fails to pay withholding tax and / or increase in tax imposed on him:

No deduction is given for the payment made to a NR payee against business income in the income tax computation of the payer, and
Civil suit action on the payer to recover withholding tax and / or increase in tax not paid which remains a debt due to the Government

Contract Payments To Non-Resident Contractors (NR payee)

Contract payments made to non-resident contractors in respect of services under a contract are subject to withholding tax of:

1. 15 % on the service portion of the contract payments on account of tax payable by the NR payee; and
2. 5 % on the service portion of the contract payments on account of tax payable by employees of the NR payee
3. "Services under a contract" means any work or professional services performed or rendered in Malaysia in connection with or in relation to any undertaking, project or scheme carried on in Malaysia
4. The payer must, within one month after the date of payment / crediting the contract payment, remit the withholding tax (whether deducted or not) to the Inland Revenue Board, Malaysia. See "Withholding Tax Deduction"

Interest Paid To Non-Resident Persons (NR payee)

Interest paid to a NR payee is subject to withholding tax at 15% (or any other rate as prescribed under the Double Taxation Agreement between Malaysia and the country where the NR payee is tax resident). This is a final tax.

Interest is deemed derived from Malaysia if:

1. Responsibility for payment lies with the Government or a State Government or
2. Responsibility for payment lies with a resident of Malaysia; or
3. Interest is charged as an outgoing or expense against any income accruing in or derived from Malaysia.

Interest not subject to withholding tax:

1. Interest paid to a NR payee on an approved loan
2. Interest paid to a NR payee by a licensed bank or licensed finance company in Malaysia other than:
 - Such interest accruing to a place of business in Malaysia of the NR payee
 - Interest on funds required for maintaining net working funds prescribed by Bank Negara.
 - Interest paid to a non-resident individual in respect of securities or bonds issued by the Government.
 - Interest paid to a non-resident individual in respect of bonds, other than convertible loan stock, issued by public companies listed on the Kuala Lumpur Stock Exchange.
 - Interest paid to a non-resident individual in respect of bonds, other than convertible loan stock, issued by a company rated by Rating Agency Malaysia Bhd. or Malaysian Rating Corporation Bhd.
 - Interest paid to a non-resident individual in respect of Bon Simpanan Malaysia issued by the Central Bank of Malaysia.
 - Interest from a Labuan Offshore company

The payer must, within one month after the date of payment / crediting the interest, remit the withholding tax (whether deducted or not) to the Inland Revenue Board, Malaysia. See "Withholding Tax Deduction" Penalties for non compliance: See "Enforcement For Compliance"

Royalty Paid To Non-Resident Persons (NR payee)

Royalty is defined as :Any sums paid as consideration for the use of, or the right to use:-

- Copyrights, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia or other like property or rights.
- Know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill .
- Income derived from the alienation of any property, know-how or information mentioned in above paragraph of this definition.

The gross amount of royalty paid to a NR payee is subject to withholding tax at 10% (or any other rate as prescribed under the Double Taxation Agreement between Malaysia and the country where the NR payee is tax resident). This is a final tax. Royalty deemed derived from Malaysia if:

1. Responsibility for payment lies with the Government or a State Government; or
2. Responsibility for payment lies with a resident of Malaysia; or
3. The royalty is charged as an outgoing or expense against any income accruing in or derived from Malaysia.

The payer must, within one month after the date of payment / crediting the royalty, remit the withholding tax (whether deducted or not) to the Inland Revenue Board, Malaysia. See "Withholding Tax Deduction"

Royalty Paid To Non-Resident Persons (NR payee)

Royalty is defined as :Any sums paid as consideration for the use of, or the right to use:-

- Copyrights, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia or other like property or rights.
- Know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill.
- Income derived from the alienation of any property, know-how or information mentioned in above paragraph of this definition. The **gross amount** of royalty paid to a NR payee is subject to withholding tax at 10% (or any other rate as prescribed under the Double Taxation Agreement between Malaysia and the country where the NR payee is tax resident). This is a **final tax. Royalty deemed derived from Malaysia if:**
 1. Responsibility for payment lies with the Government or a State Government; or
 2. Responsibility for payment lies with a resident of Malaysia; or
 3. The royalty is charged as an outgoing or expense against any income accruing in or derived from Malaysia.

The payer must, within one month after the date of payment / crediting the royalty, remit the withholding tax (whether deducted or not) to the Inland Revenue Board, Malaysia. See "Withholding Tax Deduction"

Special Classes Of Income Paid To Non-Resident Persons

Special classes of Income include:

1. payments for services rendered by the NR payee or his employee in connection with the use of property or rights belonging to or the installation or operation of any plant, machinery or apparatus purchased from the NR payee.
2. payments for technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme or
3. rents or other payments (made under any agreement or arrangement) for the use of any moveable property.

Provided that in respect of paragraph (1) and (2), this section shall apply to the amount attributable to services which are performed in Malaysia.

Payment deemed derived from Malaysia if:

1. Responsibility for payment lies with the Government or a State Government; or
2. Responsibility for payment lies with a resident of Malaysia.
3. Payment is charged as an outgoing or expense in the accounts of a business carried on in Malaysia. The gross amount of "Special Classes Of Income" paid for the above services rendered by a NR payee is subject to withholding tax at 10% (or any other rate as prescribed in the Double Taxation Agreement between Malaysia and the country in which the NR payee is tax resident). This is a final tax.

The payer must, within one month after the date of payment / crediting of the payment to the NR payee, remit the withholding tax (whether deducted or not) to the Inland Revenue Board, Malaysia. See "Withholding Tax Deduction"

Interest Paid To Resident Individuals

Interest (other than exempt interest) paid to resident individuals by approved financial institutions is subject to withholding tax at 5%.

According to present practice, the payer is required to remit the withholding tax (whether deducted or not) for six-monthly periods to the Inland Revenue Board within one month after the expiry of each six-monthly periods together with the external auditor's report. In default, the amount of tax that should have been deducted will be a debt due to the Government and recoverable from the payer.

This tax is a **Final Tax**. Taxpayers need not declare such interest in their annual tax returns.
Approved financial Institutions:

1. A bank or finance company licensed under the Banking and Financial Institution Act 1989 (BAFIA) or the
2. Islamic Banking Act 1983 (IBA).
3. A registered cooperative society
4. Bank Simpanan Nasional (BSN)
5. Bank Pertanian Malaysia
6. Lembaga Tabung Haji
7. Malaysia Building Society Bhd.
8. Borneo Housing Mortgage Finance Bhd.
9. Any other institution that may be approved by the Minister of Finance

Interest for resident individuals exempt from withholding tax include:

1. Interest or bonus from any saving accounts or deposit under the "Save as You Earn Scheme" with Bank Simpanan Nasional
2. Interest from saving deposits of up to RM100,000 with an approved financial institution.
3. Bonus from saving accounts with Lembaga Tabung Haji
4. Interest from fixed deposit accounts (including negotiable certificates of deposits) of up to RM100,000 for a period not exceeding twelve months with an approved financial institution
5. Interest from fixed deposit accounts (including negotiable certificates of deposits) without limit of amount for a period of twelve months or more with an approved financial institutions.
6. Gains or profits on deposits of up to RM100,000 in any saving account under the "Interest-Free Banking Scheme (IFBS)" with a bank or finance company licensed under the BAFIA or IBA.
7. Gains or profits from any investment account of up to RM100,000 for a period not exceeding twelve months with a bank or finance company licensed under the BAFIA or IBA.
8. Gains or profits from any investment account without limit of amount for a period of twelve months or more under the "Interest-Free Banking Scheme" with a bank or finance company licensed under the BAFIA or IBA

Non-Resident Public Entertainers

"**Public Entertainer**" means a stage, radio or television artiste, a musician, athlete or an individual exercising any profession, vocation or employment of a similar nature.

Remuneration or other income in respect of services performed or rendered in Malaysia by a Non-resident public entertainer is subject to withholding tax at 15 % on the gross payment. The present practice continues whereby the sponsor of the non-resident public entertainer is required to pay withholding tax at 15 % before an entry permit for the non-resident public entertainer can be obtained from the Immigration Authority

Double Taxation Agreements And Protocols

Malaysia has concluded about 47 effective Double Taxation Agreements with other countries. For information on the varying rates of withholding tax on interest, royalty and technical fees, see "Assessment of Tax" "DTA". For refund of withholding tax overpaid by the payer due to the DTA reduced rates, the payee must forward the application for refund to the Director, Non Resident Branch together with the following details:

- Reason for the refund.
 1. Tax resident certificate of the payee from the tax authority of the country where the payee is tax resident.
 2. Evidences to prove that the conditions stipulated in the DTA are met.

Proof of payment of withholding tax. Note: Amendment on the Act under Section 107A and Section 15A, Income Tax Act 1967 put into force on the 21st September 2002

1. Starting on the 21st September 2002, the applicable withholding tax rate under sub-Section 107A (1)(a) is ten percent (10%) compared to previous rate of fifth teen percent (15%). For withholding tax rate under sub-Section 107A (1) (b) is three percent (3%) compared to previous rate of five percent (5%).

2. Starting on the 21st September 2002, any payment for technical services/consultancy/installation of plant & machinery which is performed outside Malaysia (off-shore), are not subject to withholding tax on condition the "payer" and "payee" need to furnish documents as evidence, which convince the Inland Revenue Board. However this provision does not apply for special classes of income under Section 4A (iii), Income Tax Act 1967.