



Tax Espresso – Special Alert Practice Note No. 1/2018 - Tax treatment on digital advertising provided by a non-resident

Practice Note No. 1/2018 (issued on 16 March 2018)

The Inland Revenue Board of Malaysia (“IRBM”) has uploaded the [Practice Note No. 1/2018](#) (issued on 16 March 2018) on its website with a view to providing guidance on the withholding of tax on income from the provision of digital advertising by a non-resident.

Based on the Practice Note No. 1/2018, essentially the tax treatment on the payment for digital advertising by a non-resident is dependent on the facts of each case and summarised as follows:

Non-resident	Type of payment	Withholding tax
No PE / business presence in Malaysia	a) <u>Royalty income</u> If it is for the purchase of / use of an application (Apps) by the payer that allows the payer to create its own advertising campaign	10% (Section 109 of the ITA)
	b) <u>Service fee income (Section 4A(ii) of the ITA)</u> If the payer solely relies on the service provider to deal with all aspects of digital advertising where there is no involvement of the purchase / use of Apps.	10% (Section 109B of the ITA)
Existence of PE / Business presence in Malaysia	<u>Contract payment</u> Payment received constitutes a business income which is derived from Malaysia by the non-resident and will be taxed under Paragraph 4(a) of the ITA.	For service payments, withholding tax @ 10% + 3% under Section 107A of the ITA may apply.

Commentary

- 1) Whilst the Practice Note No. 1/2018 does not have the force of law, it is crucial for the taxpayers to consider the position taken by the tax authorities.

- 2) Where the payees are tax residents in countries that have concluded double taxation agreements (DTAs) with Malaysia, the treaty position (e.g. reduced rates, definition of royalty, etc.) must be duly considered as generally the DTA prevails over the domestic tax law.
- 3) Recently, the Organisation for Economic Co-operation and Development (OECD) has released an interim report on digitalisation (i.e. Tax Challenges Arising from Digitalisation – Interim Report 2018) which discusses the tax challenges of the digital economy. It is worthwhile for one to read the report to gain an overview of the positions / treatments adopted by the various jurisdictions around the globe.

For any queries or assistance, please speak to your usual Deloitte contact or any member of the International Tax Services Group listed below.



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