



## **Tax Espresso – Special Alert** Public Ruling (PR) No. 10/2019 – Withholding Tax on Special Classes of Income

### **Introduction**

The Inland Revenue Board of Malaysia (IRBM) has recently released [PR No. 10/2019](#) – Withholding Tax on Special Classes of Income (dated 10 December 2019) to explain the:

- Special classes of income that are chargeable to tax under Section 4A of the Income Tax Act 1967 (ITA);

- deduction of tax from special classes of income; and
- consequences of not deducting and remitting the tax from special classes of income.

The PR replaces the old [PR No. 11/2018](#) dated 5.12.2018. The highlights of the changes are as below.

### Highlights of the changes made in the PR

1. Paragraph 14.3 is amended as follows (amendment shown in green text), "Where the withholding tax is not due for payment and no payment or crediting is made to the non-resident payee on or before the due date of submission of the ITRF, ~~a deduction is not allowable under paragraph 39(1)(j) of the ITA if the withholding tax is not paid or remitted to the DGIR~~ regardless of the withholding tax has been paid or remitted to the DGIR, a deduction is not allowable under paragraph 39(1)(j) of the ITA."

Effective from the publication date of the PR (i.e. 10 December 2019), where a company has been provided services by a non-resident and payment for the services is due after the due date for filing a return, no deduction should be claimed for the expenditure on services rendered even though withholding tax has been voluntarily paid upfront to the IRBM before the filing of tax return for the relevant year of assessment.

2. The PR now incorporates the removal of the word 'technical' by Finance Act 2018 in Section 4A(ii), Section 15A, Section 109B and Part V(ii) of Schedule 1 of the ITA which is effective from 28.12.2018.

Paragraph 7.1 of the PR states that the amendment to Section 4A(ii) of the ITA does not affect the scope of payment made to the non-resident person in which the scope of payment includes payments for non-technical assistance and non-technical services. [**Note:** It clarifies that the IRBM's position prior to and post 28.12.2018 has remained the same, i.e. payment made to a non-resident person that falls under Section 4A(ii) includes payment for non-technical assistance and non-technical services, except that the IRBM's position has been legislated with effect from 28.12.2018].

3. Example 3 is amended to state that a payment of RM120,000 for services rendered in January 2019 by Champ Ltd (non-resident) in connection with the installation and commissioning of the steel

boiler in the USA are deemed derived from Malaysia and chargeable to tax under Section 4A(i) of the ITA. However, effective 6.9.2017, payment for such installation and commissioning is exempted from income tax as the services are rendered and performed by Champ Ltd outside Malaysia.

4. Example 5 is amended to state that the fee of RM150,000 relating to the services performed in Vietnam by a non-resident is exempted from:
  - (i) **income tax effective 6.9.2017**; and
  - (ii) withholding tax in the DTA between Malaysia and Singapore.
5. Example 7 is amended to state that a reimbursement such as local lodging is not subject to withholding tax under Section 109B of the ITA.
6. Example 15 now states that the removal of regrossing requirement to determine the withholding tax amount under Section 109B takes effect from the date of publication of the old PR 11/2018 (i.e. 5.12.2018) which refers to the **date the payment has to be made** by a payer to a non-resident **as agreed between the parties to the agreement**.
7. The Note to Example 22 is amended to state that where late payment penalty is payable to a non-resident for missing the payment deadline (as specified in the contract between a payer and the non-resident), in the absence of a DTA or where there is a DTA between Malaysia and the non-resident's country and the DTA does not mention late payment penalty, such late payment penalty charged by the non-resident would be considered as other income under Section 4(f) of the ITA and subject to a withholding tax under Section 109F of the ITA. [**Note:** In the old PR, such late payment penalty was considered interest income under Section 4(c) pursuant to Section 4B of the ITA and hence subjected to the withholding tax under Section 109 of the ITA.]

\*Generally the IRBM's position is that income of a non-resident that can be categorised as Section 4(f) of the ITA have the following criteria:

- the payment does not fall under Sections 4(a) to 4(e) and Section 4A of the ITA;
- the payment received by the non-resident person is in the nature of a miscellaneous income. Such income is often casual in nature. Casual income means an occasional income, which is received outside the ordinary course of trade or vocation;

- the payment is for an isolated transaction; and
- there is an absence of repetition of transactions to indicate the commercial nature of the transaction.

### **Assistance required**

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