



Tax Espresso – Special Alert

Withholding tax exemption on offshore services

The Legislation – Position from 17 January 2017 onwards

Effective 17 January 2017, Section 4A(i) and (ii) withholding tax (“WHT”) at the rate of 10% is re-imposed on payments to non-residents for offshore services (i.e., services rendered outside of Malaysia).

Special Classes of Income under Section 4A(i) and (ii) of the Income Tax Act, 1967 (the ITA) read as follows:

Notwithstanding the provision of section 4 and subject to this Act, the income of a person not resident in Malaysia for the basis year for a year of assessment in respect of-

- (i) amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;*
- (ii) amounts paid in consideration of 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*

(iii).....;

which is derived from Malaysia is chargeable to tax under this Act.

The Practice Note 1/2017

In respect of the offshore services, the Malaysian Inland Revenue Board (MIRB) has issued the Practice Note 1/2017 which confirms that the effective date of 17 January 2017 refers to the date services were performed. Prior to 17 January 2017, only onshore services are subject to WHT.

Position from 6 September 2017 onwards

Following various feedback sessions and consultations with the industry, the Minister of Finance (MoF) has agreed to grant WHT exemption on payments to non-residents that fall within Section 4A(i)/(ii) in respect of offshore services via the [Income Tax \(Exemption\) \(No. 9\) Order 2017](#) (the PU Order).

The PU Order is deemed to have come into operation on 6 September 2017. We expect that the MIRB would provide clarification as to what 6 September 2017 means, whether it refers to the date services are rendered or payments are made.

Key takeaways

Given the above, please note that taxpayers are required to maintain sufficient records (information and documents) to substantiate that the services, advice and assistance specified in Section 4A(i) and (ii) were performed overseas and that the exemption applies to them.

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

Tan Hooi Beng	+603 7610 8843
Lee Chong Hoo	+603 7610 8139
Kelvin Yee	+603 7610 8621
Tan Chia Woon	+603 7610 8791
Eunice Hoo	+603 7610 8169

Best regards

Tan Hooi Beng
International Tax Leader
Deloitte Malaysia



Deloitte Tax Services Sdn Bhd

Level 16, Menara LGB
1, Jalan Wan Kadir
Taman Tun Dr Ismail
60000 Kuala Lumpur
Malaysia

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