



## Tax Bytes

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Greetings from your Tax & Legal team at Deloitte Singapore. We hope that you and your loved ones are staying safe and healthy despite these challenging times. As we navigate ourselves through this trying period, we are committed to giving you the support you need.

### **IRAS e-Tax guide on determining the date of payment or deemed payment for the purpose of complying with withholding tax obligations**

On 8 November 2021, the Inland Revenue Authority of Singapore (IRAS) published the e-Tax Guide “Determining the Date of Payment or Deemed Payment for the Purpose of Complying with Withholding Tax Obligations” (the e-Tax Guide) to replace the circular “Clarification on Date of Payment of Income for the Purposes of Withholding Tax under Section 45 of the Singapore Income Tax Act and Changes to the Withholding Tax Regime Which Takes Effect From 1 April 2003” (the “Circular”).

To recap, section 45 of the Income Tax Act (“ITA”) sets out the Singapore payer’s obligation to withhold tax on interest made to a non-resident persons. Pursuant to section 45(8)(b) of the ITA, a Singapore payer is required to account for the withholding tax on interest on the earliest of the following dates notwithstanding that the interest has not been paid out and is instead reinvested, accumulated, capitalised, carried to any reserve or credited to any account however designated or otherwise dealt with on behalf of the non-resident person:

- when the liability to pay the income arises (i.e., the income is due and payable) in accordance with the terms of the agreement or contract. In the absence of an agreement or contract, the date of invoice (further explained below) is regarded as the deemed date of payment;
- when the income is credited to the account of the non-resident person (or reinvested, accumulated, capitalised, or carried to any reserve or any other account however designated, or otherwise dealt with on his behalf); and
- when actual payment of the income is made.

The Singapore payer's withholding tax obligation is not limited to only the payment of interest but to all other types of income covered under sections 12(6) and 12(7) of the ITA including *inter alia* royalties, technical service fees and management fees.

The Circular, in essence, clarifies how to determine the date of payment of income for the purpose of complying with withholding tax requirements, the filing and payment procedures as well as penalties imposed for non-compliance. While the Circular has since been replaced by the e-Tax Guide, it should be emphasized that there is no change in IRAS' stance. Instead, the e-Tax Guide seeks to provide additional clarifications and illustrative examples on IRAS' practice. The key updates covered in the e-Tax Guide are as follows: -

#### **Date of payment of income where there is a contract or agreement**

Where the date on which income is payable to a non-resident person is stipulated under any written contract or agreement, the date of payment of the income shall be the due and payable date as stipulated therein.

However, if the agreement contains the condition that the income is only payable by Singapore payer upon demand by the non-resident person or voluntarily by Singapore payer, then the date of payment shall be the date printed on the demand note from the non-resident person or the date voluntary payment is made by Singapore payer.

#### **Date of payment of income where there is an accrual in the payer's account**

Where the accrual is a mere accounting entry, and the liability to pay the income has not arisen and no deduction under section 14 has been allowed yet, there is no obligation on the part of the Singapore payer to withhold tax. Please refer to the e-Tax Guide for illustrative examples.

#### **Date of payment of income where there is no physical pay over of cash**

While the concept of "accrual" should cover instances where there is no physical payment of cash, the IRAS had in the e-Tax Guide clarified that the Singapore payer is obliged to withhold tax on income where the non-resident person has instructed the Singapore payer not to pay over such income in cash on the due date and instead:

- credit such income to the non-resident person's designated account, or
- direct such income to be paid over to another party to settle the non-resident person's outstanding liability with that party, or
- add to the principal loan payable to the non-resident person.

In the above instance, IRAS will deem such income as being paid on the due date. Please refer to the e-Tax Guide for illustrative examples.

As a result of the clarifications in the e-Tax Guide, there appears to be an alignment on the timing of deduction under section 14 of the ITA to the date of payment of income for withholding tax.

## Deloitte Singapore's views

Based on the examples provided in the e-Tax Guide, the IRAS appears to have taken the position that for payments made to non-resident payees, the Singapore payer's income tax deduction should be allowed with the incurrance of a liability, which seemingly equates to deemed payment, i.e., when the withholding tax obligation arises (and will be complied with). We note that this position may differ from the common understanding that expenses wholly and exclusively incurred during the period by the Singapore payer in the production of income are generally deductible, and the word "incurred" does not mean that the expenditure must be due and payable at the end of the year, i.e., the expenditure is generally deductible as long as there is a legal liability to pay at the end of the year, even if the invoice is issued or actual payment is due in a later year. We anticipate that with the additional clarification provided in the e-Tax Guide, the IRAS will increase their audit focus on accrued expenses payable to non-residents in taxpayer accounts.

Separately, section 45(8)(b) of the ITA deems a payment to have been made to another person although it is not actually paid to the other person but is instead "reinvested, accumulated, capitalised, carried to any reserve or credited to any account however designated or otherwise dealt with on behalf of the other person". This means that even if the Singapore payer did not make any physical payment, a withholding tax obligation may be triggered if the payable is deemed to be "reinvested, accumulated, capitalised, carried to any reserve or credited to any account however designated or otherwise dealt with on behalf of" the non-resident payee. While section 45(8)(b) of the ITA is not new, it is certainly helpful that IRAS has given examples of how to interpret section 45(8)(b) in the e-Tax Guide. For example, the IRAS has clarified that interest is deemed paid if it is credited to a designated account and/or added to the principal loan amount upon agreement between the Singapore payer and non-resident payee, and as a result, the withholding tax obligation arises. Given that there may be other scenarios that do not fit neatly into the examples outlined in the e-Tax Guide, taxpayers should be mindful of how the IRAS interprets the phrase "reinvested, accumulated, capitalised, or carried to any reserve or any other account", look at their current specific situation, and then discuss with their tax agents to determine what actions are required.

It is worth noting that for director's remuneration (including fees, bonuses, and other benefits provided) payable or paid to non-residents, the date of payment on which the Singapore payer is liable to withhold tax is the date on which the remuneration is accrued to the non-resident director. The e-Tax Guide on Tax Treatment of Director's Fees and Bonuses from Employment (Second Edition) published on 12 September 2014 may be referred to for more guidance.

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## Contacts

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