

WITHHOLDING TAX REGULATION IN MALAYSIA

INTRODUCTION

A method of tax collection through tax deduction at the payment level. Occurs when payments are made to resident and non-resident payee. This withholding tax must pay to the Inland Revenue Board of Malaysia.

PAYER

Refers to an individual/body other than individual carrying on a business in Malaysia. He is required to withhold tax on payments for services rendered/ assistance/ received rental/ contract payments or other payments made under any agreement for the use of any moveable property and paid to a non-resident payee.

Withholding Tax that has been deducted correctly and in an orderly manner must be remitted within 1 month from the date of payment together with the relevant payment forms with duly completed.

PAYEE

Refers to a non-resident individual/body other than individual in Malaysia who receives the above payments for services rendered/ assistance/ received rental/ contracts payments or other payments made under any agreement for the use of any moveable property.

PAYMENT TYPES & WITHHOLDING TAX RATE

Bil	Payment Types	Income Tax Act 1967	Withholding Tax Rates	Payments Forms
1.	Contract Payment	Section 107(1)(a), 107(1)(b) & 107A(5)	10%, 3%	CP 37A
2.	Interest	Section 109	15%	CP 37
3.	Royalty	Section 109	10%	CP 37
4.	Special classes of income: Any advice given, assistance, payments for services, rent/payment for use of moveable property	Section 109B	10%	CP 37D
5.	Interest (except exempt interest) paid by approved financial institutions	Section 109C	5%	CP 37C
6.	Income of non-resident public entertainers	Section 109A	15%	Payment memo issued by Assessment Branch

7.	Real Estate Investment Trust (REITs): Effective from YA 2021 (i) Non-Resident Company (ii) Foreign Investment Institutions (iii) Other than a Resident Company – Individual and Other	Section 109D	24% 10% 10%	CP 37E
8.	Family Fund/ Takaful Family Fund/ Dana Am (i) Individual and other (ii) Non-Resident Company	Section 109E	8% 24%	CP 37E(T)
9.	Income under Section 4(f) ITA 1967	Section 109F	10%	CP 37F

TYPES OF PAYMENTS

1. Contract Payments to Non-Resident Contractors

- (a) 10% on the service portion of the contract payments on account of tax payable by the Non-Resident payee;
- (b) 3% on the service portion of the contract payments on account of tax payable by employees of the Non-Resident Payee;
- (c) Service under contract means the performing or rendering of any work professional service in Malaysia, being work or professional service in connection with, or in relation to, any contract project.

2. Interest Paid to Non-Resident Persons

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

3. Interest is considered to be derived from Malaysia if:

- (a) Responsibility for payment lies with the Government or a State Government; or
- (b) Responsibility for payment lies with a resident of Malaysia; or
- (c) Interest is charged as an outgoing or expense against any income accruing in or derived from Malaysia.

4. Royalty Payments to Non-Resident Persons

Any sums paid as consideration for the use of or the right to use:

- (a) Software;
- (b) Transmission via satellite;
- (c) Fees prevent the rights of exercise;
- (d) Payment for the use of industrial, commercial and scientific equipment; and

(e) Use of radiofrequency spectrum subject to the relevant license.

10% from the gross amount of royalty paid to a non-resident payee is subject to withholding tax (or any other rate as prescribed under the Double Taxation Agreement between Malaysia and the country where non-resident payee is tax resident). This is a final tax.

5. Royalty Deemed Derived from Malaysia if:

- (a) Responsibility for payment lies with the Government or a State Government; or
- (b) Responsibility for payment lies with a resident of Malaysia; or
- (c) The royalty is charged as an outgoing expense against any income accruing in or derived from Malaysia.

6. Income Distribution by Real Estate Investment Trust (REITs) to Unitholders

24% distributed by REITs to a non-resident company is subject to withholding tax. While 10% of the income distributed by REITs to individuals and foreign institutional investor is also subject to withholding tax. This is a final tax.

7. Any Payments to Agents or Distributors

2% of any payment to an agent or distributor is subject to withholding tax. The basis for determining withholding tax is based on the amount received either cash or non-cash in excess of RM 100,000 from the paying company.

8. Payments of Certain Income of Special Classes to Non-Resident Recipients

Special classes of income include:

- (a) Payments for services rendered by the non-resident 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 non-resident payee;
- (b) Payments for advice, assistance or services rendered in connection with management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or
- (c) Rents or other payments (made under any agreement or arrangement) for the use of any moveable property.

Provided that in respect of paragraph (a) and (b) this shall apply to the amount attributable to services which are performed in Malaysia- Section 15A.

9. Payment is Deemed Derived from Malaysia if:

- (a) Responsibility for payment lies with the Government or a State Government; or
- (b) Responsibility for payment lies with a resident of Malaysia.

- (c) Payment is charged as an outgoing or expenses in the accounts of a business carried on in Malaysia.

10. 'Special Classes of Income'

10% from the gross amount of 'Special Classes of Income' paid for the above services rendered by a non-resident payee subject to withholding tax (or any other rate as prescribed in the Double Taxation Agreement between Malaysia and the country in which the non-resident payee is tax resident). This is a final tax.

11. Payment to Non-Resident Public Entertainers

- (a) '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.
- (b) 15% from remuneration or other income in respect of services performed or rendered in Malaysia by a non-resident public entertainer is subject to withholding tax.

The payer must, within one month after the date of payment/crediting of the payment to the non-resident payee, remit the withholding tax (whether deducted or not) to the Inland Revenue Board of Malaysia.

ENFORCEMENT

Where the payer fails to pay or pays withholding tax late (not within the period of one month after the date of payment/crediting to the non-resident payee), an increase in tax of a sum equal to ten percent (10%) of the amount which he fails to pay is imposed.

Example:

- Royalty paid to non-resident payee on 03/08/2021 = RM 200,000
- Withholding tax received by IRBM on 10/09/2021 later than 03/09/2021 = RM 20,000.
- Increase in tax imposed on payer (20,000 @ 10%) = RM 2,000
- Effective from 03/09/2021
- Where the payer fails to pay withholding tax and/or increase in tax imposed on him:
No deduction is given under Section 33(1), ITA 1967 for the payment made to a non-resident payee against business income in the income tax computation of the payer, and civil suit action under Section 106, ITA 1967 on the payer to recover withholding tax and/or increase in tax not paid which remains a debt due to the Government.