

Taxavvy

IRB's Practice Note on Digital Advertising

27 March 2018

The Inland Revenue Board (IRB) has issued Practice Note No. 1/2018 – Tax Treatment on Digital Advertising Provided by a Non-Resident (PN 1/2018) to provide guidance on the tax treatment on payments in relation to digital advertising made to non-residents (NR).

The IRB's Guidance

Purpose of payment	Tax treatment
Purchase or use of (for example) an application (Apps) by the payer that allows the payer to create their own advertisement campaign	<ul style="list-style-type: none">• Treated as royalty income of NR• Subject to withholding tax (WHT) under Section 109 of the Income Tax Act 1967 (Act)
Not for the purchase or use of an Apps but merely a provision of service by the NR (payer solely relies on the service provider to deal with all aspects of digital advertising)	<ul style="list-style-type: none">• Treated as special class of income under Section 4A(ii) of the Act• Subject to WHT under Section 109B of the Act

The above guidance applies where the NR has neither a permanent establishment (PE)¹ nor a business presence² in Malaysia. In cases involving NR with either a PE¹ or a business presence² in Malaysia, the payment is treated as the NR's business income under Section 4(a) of the Act.

Matters to consider

1. Double tax agreements (DTAs)

PN 1/2018 clearly sets out the IRB's position that payments for using application (Apps) to create advertising campaigns constitutes royalty income under domestic law. However, the guidance is silent with respect to application of DTAs, i.e. whether the DTAs accord Malaysia with rights to impose WHT on such payments.

¹ Applicable to resident of a country which has entered into a Double Taxation Agreement with Malaysia

² Applicable to resident of a country which has not entered into a Double Taxation Agreement with Malaysia

Matters to consider (cont'd)

2. Location of service performance and WHT exemption

Payments which the IRB considers as a Section 4A(ii) income are eligible for WHT exemption. This is provided under the Income Tax (Exemption) (No. 9) Order 2017 for services performed outside of Malaysia from 6 September 2017. Therefore, the location where such services are performed needs to be determined.

PN 1/2018 is available on the IRB's website www.hasil.gov.my (Legislation > Practice Note).

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