



Public Ruling 11/2018 – Withholding Tax on Special Classes of Income

Public Ruling 11/2018 – Withholding Tax on Special Classes of Income

The IRB has issued *Public Ruling 11/2018 - Withholding Tax on Special Classes of Income* (“PR 11/2018”) dated 5 December 2018, replacing the earlier *Public Ruling 1/2014 - Withholding Tax on Special Classes of Income* (“PR 1/2014”). PR 11/2018 essentially incorporates changes to the law since PR 1/2014 was issued as well as sets out changes in Inland Revenue Board’s (IRB) positions with respect to certain matters, some of which take immediate effect from the date the new public ruling is published.

Regrossing no longer required

Effective from 5 December 2018, where a Malaysian payer bears the withholding tax on payments made to non-residents which fall within the Special Classes of Income category, the Malaysian payer is not required to regross the payment amount to compute the withholding tax due and payable to the IRB.

Changes in IRB’s position

	Previous position in PR 1/2014	Revised position in PR 11/2018
<i>Regrossing of payment made to non-resident in computing withholding tax (WHT) to be remitted to IRB in cases where the WHT is borne by the payer</i>	Example 15 of PR 1/2014 illustrates that where WHT is borne by the payer and not recovered from the payee, the IRB requires the WHT that is to be remitted to them to be computed based on a regrossed sum (i.e. a sum which notionally assumes that the amount paid to the NR represents an amount that is net of WHT).	With effect from 5 December 2018, where WHT on Special Classes of Income is borne by a payer, no regrossing is required, i.e. the WHT that is required to be remitted to the IRB shall be computed based on the actual gross amount of payment to the non-resident under contract. (Paragraph 12.1 of PR 11/2018)
<i>Testing services</i>	In Example 23 of PR 1/2014, the IRB provided that “testing services for the provision of test results on finished products to meet required standards (certification) which do not involve technical advice or consultation” do not fall within the scope of Section 4A of the ITA and hence are not subject to WHT under Section 109B.	The IRB has stated in the public ruling that “testing and calibration” is an example of technical support which is caught under Section 4A(ii) of the ITA. Example 23 of PR 1/2014 is not reproduced in PR 11/2018. In its place, Example 12 provides that the provision of testing, measurement and calibration services are caught under Section 4A(ii) of the ITA. It is noted that the example does make a distinction on whether the services are for meeting certification standards. (Paragraph 7.2 and Example 12 of PR 11/2018)

Our comments

If you have relied on PR 1/2014 in making the decision to not withhold tax for payments made to non-residents for testing services (to meet standards certification), you should speak to your tax advisors to review the position.

Previous position in PR 1/2014

Revised position in PR 11/2018

Allocation of expenses from head office

Expense allocation from head office in respect of "ordinary day-to-day or routine administration expenses which are in no way related to performance of any specialised service" is excluded from the scope of Section 4A(ii) of the Income Tax Act 1967 (ITA) and hence not subject to WHT under Section 109B of the ITA.

(Paragraph 8.4 and example 4 of PR 1/2014)

The IRB has now deleted the specific exclusion set out in PR 1/2014.

Our comments

Since the specific exclusion is no longer provided in PR 11/2018, such payments would need to be examined to determine whether or not they are caught within the scope of Section 4A bearing in mind that IRB's prevailing position is that Section 4A(ii) covers both technical and non-technical services.

No more concession for ordinary day-to-day or routine administrative expenses



New additions to PR 11/2018

Fees other than freight charges

- The IRB maintains its position from PR 1/2014 that freight charges are not caught under Section 4A(iii) of the ITA.
- The IRB has now added that fees other than freight charges such as handling and agency fees fall under Section 4A(ii) of the ITA and hence are subject to WHT.

(Paragraph 8.2)

Applicable foreign exchange (Fx) rate in computing WHT to be remitted to the IRB.

The following information is now set out in PR 11/2018:

- Fx rate on date of payment to non-resident (as reflected in the telegraphic transfer) is to be used to calculate the WHT in Ringgit Malaysia.
- Fx rate is based on rates published in the IRB or Bank Negara Malaysia's websites.

(Paragraph 12.2)

Services in connection with royalties

The IRB has included a note to state that services in connection with use of property or rights belonging to a non-resident under the scope of the royalty definition, falls under the scope of Section 4A(i) and is subject to Section 109B WHT.

(Paragraph 6.1)

Application of "Other Income" Article in tax treaties without a Technical Fee Article

The IRB's prevailing position that the Other Income Article is applicable to provide Malaysia with the right to impose WHT on a non-resident with no Permanent Establishment in Malaysia is now set out in PR 11/2018.

(Paragraph 18.1)

Our comments

This position may be challenged by the non-resident recipient.

Other Income Article applies in the absence of a Technical Fee Article in tax treaties

Some of these changes may be controversial

You may be exposed to more withholding tax in view of IRB's position. This is an opportune time to review your withholding tax position and the technical ground thereof, taking into consideration the recent changes to Section 4A as proposed in Budget 2019.

Connect with us

Kuala Lumpur

Jagdev Singh

jagdev.singh@pwc.com
+60(3) 2173 1469

Labuan

Jennifer Chang

jennifer.chang@pwc.com
+60(3) 2173 1828

Penang & Ipoh

Tony Chua

tony.chua@pwc.com
+60(4) 238 9118

Johor Bahru

Benedict Francis

benedict.francis@pwc.com
+60(7) 218 6000

Melaka

Benedict Francis

benedict.francis@pwc.com
+60(7) 218 6000

Au Yong

paik.hup.au@pwc.com
+60(6) 283 6169

Corporate Tax Compliance & Advisory

Consumer & Industrial Product Services

Margaret Lee

margaret.lee.seet.cheng@pwc.com
+60(3) 2173 1501

Steve Chia

steve.chia.siang.hai@pwc.com
+60(3) 2173 1572

Emerging Markets

Fung Mei Lin

mei.lin.fung@pwc.com
+60(3) 2173 1505

Energy, Utilities & Mining

Lavindran Sandragasu

lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Financial Services

Jennifer Chang

jennifer.chang@pwc.com
+60(3) 2173 1828

Technology, Media, and Telecommunications

Heather Khoo

heather.khoo@pwc.com
+60(3) 2173 1636

Specialist services

GST / Indirect Tax

Raja Kumaran

raja.kumaran@pwc.com
+60(3) 2173 1701

Yap Lai Han

lai.han.yap@pwc.com
+60(3) 2173 1491

Chan Wai Choong

wai.choong.chan@pwc.com
+60(3) 2173 3100

International Tax Services / Mergers and Acquisition

Frances Po

frances.po@pwc.com
+60(3) 2173 1618

Transfer Pricing

Jagdev Singh

jagdev.singh@pwc.com
+60(3) 2173 1469

Dispute Resolution

Tai Weng Hoe

weng.hoe.tai@pwc.com
+60(3) 2173 1600

Tax Reporting & Strategy

Pauline Lum

pauline.ml.lum@pwc.com
+60(3) 2173 1059

International Assignment Services

Sakaya Johns Rani

sakaya.johns.rani@pwc.com
+60(3) 2173 1553

Hilda Liow

hilda.liow.wun.chee@pwc.com
+60(3) 2173 1638

Corporate Services

Lee Shuk Yee

shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Japanese Business Consulting

Yuichi Sugiyama

yuichi.sugiyama@pwc.com
+60(3) 2173 1191

Clifford Yap

clifford.eng.hong.yap@pwc.com
+60(3) 2173 1446

China Desk

Lorraine Yeoh

lorraine.yeoh@pwc.com
+60(3) 2173 1499

Tax Technology

Yap Sau Shiung

sau.shiung.yap@pwc.com
+60(3) 2173 1555

TaXavvy is a newsletter issued by PricewaterhouseCoopers Taxation Services Sdn Bhd. Whilst every care has been taken in compiling this newsletter, we make no representations or warranty (expressed or implied) about the accuracy, suitability, reliability or completeness of the information for any purpose. PricewaterhouseCoopers Taxation Services Sdn Bhd, its employees and agents accept no liability, and disclaim all responsibility, for the consequences of anyone acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Recipients should not act upon it without seeking specific professional advice tailored to your circumstances, requirements or needs.

© 2018 PricewaterhouseCoopers Taxation Services Sdn Bhd. All rights reserved. "PricewaterhouseCoopers" and/or "PwC" refers to the individual members of the PricewaterhouseCoopers organisation in Malaysia, each of which is a separate and independent legal entity. Please see www.pwc.com/structure for further details.