



INLAND REVENUE BOARD MALAYSIA

**WITHHOLDING TAX ON INCOME UNDER
PARAGRAPH 4(f)**

PUBLIC RULING NO. 1/2010

Translation from the original Bahasa Malaysia text

DATE OF ISSUE : 19 APRIL 2010



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DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**

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1. This Ruling provides clarification on:
 - (a) the income of a non-resident person who is chargeable to tax under paragraph 4(f) of the Income Tax Act 1967 (ITA);
 - (b) the deduction of tax from such income; and
 - (c) the responsibility of deducting and remitting tax deducted from such income.
 2. The provisions of the ITA related to this Ruling are paragraphs 4(f), 6(1)(k), sections 7, 8, 15B, 28, 29, paragraph 39(1)(j), subsection 106(1), section 109F and Part XIII of Schedule 1.
 3. The words used in this Ruling have the following meaning:
 - 3.1 "Crediting" means more than a mere journal entry or an accrual of the liability in the accounts of the payer and an amount is considered as having been credited if the amount is available to or for the benefit of the non-resident payee.
 - 3.2 "Person" in relation to the payer, includes a company, a co-operative society, a club, an association, a Hindu joint family, a trust, an estate under administration, an individual and a partnership.
 - 3.3 "Resident person" is a person resident in Malaysia for the basis period for a year of assessment as determined under sections 7 or 8 of the ITA.
 - 3.4 "Non-resident person" in relation to the payee, is a person other than a resident person.
 4. **Income falling under paragraph 4(f) chargeable to tax**
 - 4.1 The introduction of a new section 109F of the ITA with effect from 01.01.2009 provides a mechanism to collect withholding tax from a non-resident person who receives income which is derived from Malaysia in respect of gains or profits that fall under paragraph 4(f) of the ITA.
 - 4.2 For the purposes of this Ruling, *gains or profits* falling under paragraph 4(f) of the ITA that is received by a non-resident person is interpreted to mean the *gross income in respect of gains or profits* to which paragraph 4(f) applies.
 - 4.3 Determination of whether a payment made to a non-resident falls under paragraph 4(f) of the ITA depends on the facts and circumstances of each

case. As a guidance, the criteria which can be considered to determine such payment are:

- (a) the payment is revenue and not capital in nature;
- (b) the payment is not income that falls under paragraphs 4(a) to 4(e) and section 4A of the ITA;
- (c) the payment received by a non-resident person is in the nature of a miscellaneous income. Such income is often casual in nature. Casual income means an occasional income, which is received outside the ordinary course of trade or vocation;
- (d) the payment is for an isolated transaction; and
- (e) there is an absence of repetition of transactions to indicate the commercial nature of the transaction.

4.4 Profits that arise to a non-resident person from an activity which is outside the ordinary trade or vocation but which is nevertheless a profit or income item accruing would be included as income falling under paragraph 4(f) of the ITA if it does not fall under paragraphs 4(a) to 4(e) and section 4A of the ITA.

4.5 The income received may be chargeable to tax under paragraph 4(f) of the ITA regardless of whether the payment made is in the form of cash or in-kind.

5. Derivation of gains or profits under paragraph 4(f)

5.1 Pursuant to section 15B of the ITA, the gross income in respect of gains or profits to which paragraph 4(f) of the ITA applies shall be deemed to be derived from Malaysia irrespective of whether transactions are carried on in Malaysia or not if:

- (a) the responsibility for the payment of such gains or profits lies with the Government, a State Government or a local authority;
- (b) the responsibility for the payment of such gains or profits lies with a person who is resident for that basis year; or
- (c) the payment of such gains or profits is charged as an outgoing or expense in the accounts of a business carried on in Malaysia. This includes a situation where a non-resident person having a place of business in Malaysia makes the payment of such gains or profits to a non-resident person and such payment is charged as an expense in the profit and loss account.

5.2 For purposes of deducting withholding tax, the effective date for the derivation of income falling under paragraph 4(f) of the ITA is the date or period when the resident payer is liable to make payment to the non-resident person.

6. Illustration of income falling under paragraph 4(f)

Some scenarios where a non-resident person can be chargeable to tax in Malaysia on income received pursuant to paragraph 4(f) of the ITA are as follows:

Scenario 1:

Amir, a businessman in Kuala Lumpur owns a bungalow in Johor Bahru, which had been left vacant for a year. His former schoolmate Aziz, a full time retiree and living in Singapore has a neighbour who is looking for a house in Johor Bahru to purchase for investment purposes. Therefore, Aziz introduces his neighbour to Amir and his neighbour contacts Amir to enquire about his vacant bungalow. On 10.02.2009, a sales and purchase agreement is signed and the bungalow is sold to Aziz's neighbour for RM1.5 million. On 02.05.2009, Amir visits Aziz in Singapore and presents him a cheque for a sum of RM36,900 after deducting the withholding tax of RM4,100 at the rate of 10% from the gross commission of RM41,000 for introducing a buyer to him. Aziz is a non-resident under the ITA.

The RM41,000 commission paid to Aziz, a non-resident is taxable under paragraph 4(f) of the ITA because:

- (a) the commission is revenue in nature;*
- (b) Aziz acted as an introducer between the buyer (neighbour) and the seller (Amir) of the property;*
- (c) Aziz is not engaged in the real estate business;*
- (d) the commission is a casual income to Aziz; and*
- (e) the commission is deemed derived from Malaysia since the payer (Amir) is a resident of Malaysia.*

The liability to pay Aziz arises on the date the sales and purchase agreement is signed. The gross commission received by Aziz is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Note: Although there is a Double Taxation Agreement (DTA) between Malaysia and Singapore, Article 22 of the DTA (Income not expressly mentioned) does not restrict Malaysia's taxing rights.

Scenario 2:

The facts are the same as in Scenario 1 except that Amir gives Aziz a Rolex watch costing RM41,000 instead of paying the same sum in cash for the introduction to the buyer of the property.

The "payment in-kind" made by Amir to Aziz is chargeable to tax under paragraph 4(f) of the ITA based on the same reasons as in Scenario 1. The amount of payment chargeable to tax under paragraph 4(f) of the ITA is the value of the watch i.e. RM41,000. The cost of the Rolex watch received by Aziz is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Scenario 3:

The facts are the same as in Scenario 1 except that Amir sold his bungalow on 15.11.2008. Amir received 10% of the sale price of RM1.5 million upon signing of the sales and purchase agreement on 15.11.2008. Amir pays Aziz the commission of RM41,000 on 20.02.2009.

The sale of the property (sales and purchase agreement dated 15.11.2008) was made prior to 01.01.2009. Since the liability to pay Aziz arises on 15.11.2008, the commission of RM41,000 is not subject to withholding tax pursuant to section 109F of the ITA.

Scenario 4:

The facts are the same as in Scenario 1, except that Aziz introduces his neighbour in Singapore to Amir and facilitates the negotiation on the selling price of the bungalow. The negotiation takes place between 26.12.2008 and 06.01.2009. Following the negotiations, the bungalow is subsequently sold to Aziz's neighbour on 10.01.2009 (date of sales and purchase agreement) and Aziz is paid a commission of RM41,000 on 24.01.2009.

The commission of RM41,000 paid to Aziz is taxable under paragraph 4(f) of the ITA based on the reasons stated in Scenario 1. The liability to pay Aziz arises on the date of the sales and purchase agreement (10.01.2009). Therefore, the gross commission received by Aziz is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Scenario 5:

Chan, a Malaysian and a permanent resident of Singapore is involved in the real estate business in both Malaysia and Singapore. He receives commission from his clients in both countries. Chan's family lives in Singapore and Chan is not a resident in Malaysia.

Commissions received by Chan from property transactions in Malaysia have been taxed under paragraph 4(a) of the ITA since the commencement of his business in Malaysia. Although withholding tax under section 109F was introduced with effect from 01.01.2009, the commission received by Chan, from the sale of real property in Malaysia will continue to be taxable as gains or profits from a business falling under paragraph 4(a) of the ITA.

Scenario 6:

In January 2009, a local car manufacturer in Malaysia signed a deal with a Japanese luxury bus manufacturer to work jointly on electric and hybrid vehicles. The new joint venture company known as Pro-Mits Joint Venture Co (Pro-Mits) incorporated in Malaysia will focus on the manufacture, marketing and distribution of passenger cars, trucks and buses. Pro-Mits has obtained a loan equivalent to RM50 million from a leading bank in Japan. A director of the Japanese luxury bus manufacturer has issued a letter of guarantee in his personal capacity to the bank such that in the event of a default in payment by Pro-Mits, the director will undertake to pay the bank. Pro-Mits has agreed to pay a guarantee fee of RM5 million to the director concerned in one lump sum.

The guarantee fee of RM5 million paid to the director is chargeable to tax under paragraph 4(f) of the ITA because:

- (a) the guarantee fee is revenue in nature;*
- (b) the director of the Japanese company in Japan acted as a guarantor for the bank loan taken by Pro-Mits;*
- (c) the director is not engaged in any business activities in his own personal capacity;*
- (d) the guarantee fee is a casual income received outside the course of the director's normal conduct of work;*
- (e) the guarantee fee received by the director does not fall under paragraphs 4(a) to 4(e) or section 4A of the ITA; and*
- (f) the guarantee fee is deemed derived from Malaysia as the payer is a resident of Malaysia.*

The gross amount of the guarantee fee received by the non-resident director is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Note: Such payment of guarantee fee does not fall within the scope of charge of section 4A of the ITA and therefore is not subject to withholding tax under section 109B of the ITA.

Scenario 7:

In February 2009, Mitch Ltd, a company based in UK issued a letter of guarantee to a bank resident in UK to undertake to settle a loan (in the event of a default payment) taken by Harris Ltd, a non-resident company having a place of business in Malaysia. Mitch Ltd does not issue such guarantee letters in the ordinary course of its business. For this arrangement, Harris Ltd paid Mitch Ltd a guarantee fee equivalent to 1.5 % of the loan amount. This guarantee fee is charged as an expense in the profit and loss account of Harris Ltd in Malaysia.

The guarantee fee paid to Mitch Ltd is chargeable to tax under paragraph 4(f) of the ITA because it is:

- (a) *revenue in nature;*
- (b) *income received not in the ordinary conduct of Mitch Ltd's business activity;*
- (c) *a casual income which does not fall under paragraphs 4(a) to 4(e) or section 4A of the ITA; and*
- (d) *deemed derived from Malaysia as the guarantee fee is charged as an expense in the profit and loss account of Harris Ltd in Malaysia.*

The gross amount of guarantee fee received by Mitch Ltd is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Scenario 8:

The facts are the same as in Scenario 7 except that two years after 2009 i.e. in June 2011, Mitch Ltd agreed to guarantee a second loan taken by Harris Ltd from the same bank in UK. Harris Ltd paid Mitch Ltd a guarantee fee equivalent to 2% of the loan amount and this fee is charged as an expense in the Profit and Loss Account of Harris Ltd in Malaysia.

The guarantee fee paid to Mitch Ltd is chargeable to tax under paragraph 4(f) of the ITA because it is:

- (a) *revenue in nature;*
- (b) *income received not in the ordinary conduct of Mitch Ltd's business activity although Mitch Ltd had received a guarantee fee payment once before in 2009;*
- (c) *a casual income which does not fall under paragraphs 4(a) to (e) or section 4A of the ITA; and*
- (d) *deemed derived from Malaysia as the guarantee fee is charged as an expense in the Profit and Loss account of Harris Ltd in Malaysia.*

The gross amount of guarantee fee received by Mitch Ltd is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Scenario 9:

The facts are the same as in Scenario 7 except that Harris Ltd obtained the loan from the UK bank in October 2008 instead of in February 2009. When Mitch Ltd agreed to guarantee the loan, Harris Ltd signed an agreement to pay a guarantee fee in two equal installments payable on 01.12.2008 and 01.03.2009.

The liability to pay Mitch Ltd the guarantee fee arises on 01.12.2008 and 01.03.2009. As the withholding tax on income received by a non-resident pursuant to paragraph 4(f) of the ITA is effective from 01.01.2009, Mitch Ltd is only subject to withholding tax on the gross amount of the guarantee fee that is payable on 01.03.2009.

Scenario 10:

Mia Inc, a general commission agency, canvassed sales in the United States of America (USA) on behalf of Mona Inc, a non-resident company having a place of business in Malaysia. Mona Inc pays commission to Mia Inc based on the sales transactions secured overseas. Mona Inc obtained a copy of Mia Inc's audited accounts and business registration form as proof that Mia Inc is a general commission agent.

Since Mia Inc is carrying on a business in the USA and the commission received from Mona Inc is in the ordinary course of Mia Inc's business activities, the commission received by Mia Inc is classified as business income and does not fall under paragraph 4(f) of the ITA.

Scenario 11:

Lee, a Malaysian is married to a Singaporean and lives in Singapore. She is a housewife and visits Malaysia for a period of less than 90 days each year. In January 2009, Lee met her former varsity mate Maggie, at a school in Singapore where their children attend. Maggie is an insurance agent and resident in Malaysia. Lee introduced Maggie to the mothers whose children also commute daily from Johor Bahru to the school in Singapore. A few weeks later, Maggie contacted the mothers who were introduced to her and successfully sold insurance policies to a few of them. Maggie paid Lee a commission of RM1,800 on 30.06.2009 for introducing her to these mothers. The gross commission is RM2,000 and the withholding tax of 10% is RM200. Maggie claims the gross commission of RM2,000 as an expense in her profit and loss account in the year 2009.

The RM2,000 commission paid to Lee is chargeable to tax under paragraph 4(f) of the ITA because:

- (a) the commission is revenue in nature;*
- (b) Lee acted as an introducer between Maggie and the buyers of the insurance policies;*
- (c) Lee is not engaged in any type of business activities;*
- (d) the commission is a casual income and does not fall under section 4A or paragraphs 4(a) to 4(e) of the ITA; and*
- (e) the commission is deemed derived from Malaysia as the commission is charged as an expense in the Profit and Loss account of Maggie's business.*

The gross commission received by Lee is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Note: Although there is a Double Taxation Agreement (DTA) between Malaysia and Singapore, Article 22 of the DTA (Income not expressly mentioned) does not restrict Malaysia's taxing rights.

Scenario 12:

Syamil, a director of a halal food products company in Melaka meets Lokman, a director of a carpet company from Singapore at a seminar in Kuala Lumpur in January 2009. During the seminar, Syamil expressed his desire to expand his clientele to Singapore. On his return to Singapore, Lokman introduces the halal food products to his cousin who is the general manager of a hypermarket chain in Singapore. Lokman's cousin contacts Syamil and in June 2009, Syamil's company signs a contract with the Singapore hyper mart to supply halal food products worth RM10 million over a period of 5 years. The halal food company in Malaysia pays Lokman's carpet company in Singapore a sum of RM18,000 (gross commission of RM20,000 less withholding tax of 10% amounting to RM2,000) for introducing halal food products to his cousin. Lokman submitted a copy of his Singapore Company's business registration to the halal food products company as proof that his company is involved in the wholesale and retail business of carpets.

The RM20,000 commission paid to Lokman's carpet company is chargeable to tax under paragraph 4(f) of the ITA because:

- (a) the commission is revenue in nature;*
- (b) Lokman, a director of the carpet company acted as an introducer between his cousin and Syamil;*
- (c) Lokman's company is not engaged in the halal food industry in either Malaysia or Singapore but is involved in a different business activity which is the carpet business in Singapore;*

- (d) *the commission is a casual income received outside the ordinary course of the carpet business; and*
- (e) *the commission is deemed derived from Malaysia as the commission is charged as an expense in the Profit and Loss account of the halal food products company.*

The gross commission received by Lokman's carpet company is subject to withholding tax of 10% pursuant to section 109F of the ITA.

Note: Although there is a Double Taxation Agreement (DTA) between Malaysia and Singapore, Article 22 of the DTA (Income not expressly mentioned) does not restrict Malaysia's taxing rights.

7. Deduction of withholding tax

A person who pays or credits or is deemed to have paid or credited an amount to a non-resident person, in relation to any gains or profits falling under paragraph 4(f) of the ITA is required to deduct tax at the rate of 10% on the gross amount before paying the non-resident person. The payer has to pay the withholding tax to the Director General of Inland Revenue (DGIR) within one month after paying or crediting the recipient. The amount of tax deducted is the final tax of the non-resident person.

Example 1:

The facts are the same as in Scenario 1.

Gross commission	RM41,000
Less:	
Withholding tax (10%)	<u>RM4,100</u>
Payment due to Aziz	<u>RM36,900</u>

Amir should remit the sum of RM4,100 to the DGIR within one month after the date of payment of commission (02.05.2009) to Aziz. The due date of payment of the withholding tax is 01.06.2009.

Example 2:

The facts are the same as in Scenario 6 except that the guarantee fee of RM5 million payable to the director of the Japanese company is to be made in two equal payments i.e. on 15.03.2009 and 20.09.2009.

Pro-Mits Joint Venture Co should remit to the DGIR the withholding tax of 10% within one month after the date of each payment of RM2.5 million (15.03.2009 and 20.09.2009 respectively) to the director of the Japanese company. The due date of

payment of the withholding tax of RM250,000 each is 14.04.2009 and 19.10.2009 respectively.

8. Payer fails to deduct and remit tax

8.1 Where the payer fails to deduct and remit any amount of withholding tax to the DGIR due from him under subsection 109F(1) of the ITA, the amount which he fails to pay shall be increased by 10% of the amount. The amount which he fails to pay and the increased sum shall be a debt due from him to the Government and shall be payable immediately to the DGIR pursuant to subsection 109F(2) of the ITA.

Example 3:

The facts are the same as in Scenario 6 except that Pro-Mits Joint Venture Co failed to deduct and remit the withholding tax of RM500,000 pursuant to section 109F of the ITA on the payment of RM5 million to the director of the Japanese company.

The sum which Pro-Mits Joint Venture Co failed to pay shall be increased by RM50,000 (10% of RM500,000) and the total sum of RM550,000 (withholding tax of RM500,000 + increased sum of RM50,000) shall be a debt due to the Government of Malaysia.

8.2 The increase of 10% on the amount that the payer fails to pay may at the discretion of the DGIR be remitted in full or in part based on the facts and merits of each case.

8.3 Where the payment in respect of income under paragraph 4(f) of the ITA income is subject to withholding tax under section 109F of the ITA and the payer fails to deduct and remit the tax to the DGIR in accordance with subsection 109F(1) of the ITA, such payment is not allowed as a deduction in the computation of the adjusted income from any source of the payer pursuant to paragraph 39(1)(j) of the ITA. However, pursuant to the proviso to paragraph 39(1)(j) of the ITA, if the payer subsequently pays the withholding tax together with the increased amount, that payment made to the non-resident person can be allowed as a deduction.

Example 4:

The facts are the same as in Scenario 6 except that Pro-Mits Joint Venture Co did not comply with the withholding tax provisions when the guarantee fee of RM5 million was paid to director of the Japanese company.

The total guarantee fee of RM5 million is not allowed a deduction in the computation of the adjusted income for the year of assessment 2009 pursuant

to paragraph 39(1)(j) of the ITA. Legal action may be taken by the DGIR pursuant to subsection 106(1) of the ITA to recover the amount of withholding tax due.

9. Withholding tax and filing of Income Tax Returns

Withholding tax under section 109F of the ITA is a final tax. If a non-resident payee has income from sources other than income falling under paragraph 4(f) of the ITA, an Income Tax Return is to be filed (e.g. Form M for individuals or Form C for companies). The income falling under paragraph 4(f) of the ITA need not be included in the Income Tax Return as the tax withheld is a final tax.

Example 5:

The facts are the same as in Scenario 1 except that Aziz also derives rental income from Malaysia amounting to RM36,000 (net) in the year 2009.

Aziz has to file a Form M for the year of assessment 2009 and declare his rental income. The tax computation for the year of assessment 2009 is as follows:

<i>Rental income</i>	<u>RM36,000</u>
<i>Chargeable income</i>	<u>RM36,000</u>

Computation of tax chargeable:

<i>Tax @ 27% on RM36,000</i>	<u>RM9,720.00</u>
<i>Tax payable</i>	<u>RM9,720.00</u>

10. Debt due to payer

A payer is required to deduct withholding tax when making payments to a non-resident person, in relation to any gains or profits falling under paragraph 4(f) of the ITA. If the payer has not deducted the amount of withholding tax from the payment due to the non-resident but pays up the amount of withholding tax which should have been deducted to the DGIR, the payer may recover that amount of withholding tax from that non-resident person as a debt due to the payer.

Example 6:

The facts are the same as in Scenario 6 except that Pro-Mits Joint Venture Co did not deduct the withholding tax from the guarantee fee of RM5 million that was paid to the director of the Japanese company but it had paid up the withholding tax amounting to RM500,000 to the DGIR.

Pro-Mits Joint Venture Co may recover the withholding tax of RM500,000 that was paid up to the DGIR as a debt due to them from the director of the Japanese company.

11. Double Taxation Agreements (DTA)

- 11.1 The Malaysian Government has entered into agreements with a number of foreign countries for the avoidance of double taxation (commonly referred to as DTAs) should the same income be subject to tax in Malaysia and the foreign country.
- 11.2 In the absence of a DTA between the Malaysian Government with another foreign country, the domestic laws of Malaysia shall apply.
- 11.3 Income in respect of gains or profits falling under paragraph 4(f) of the ITA is dealt with under the *Other Income* Article in the DTA.
- 11.4 As the wordings in each *Other Income* Article may vary according to each DTA, reference has to be made to the relevant DTA.

12. Payment of withholding tax

- 12.1 The payer is required to remit the amount withheld to the DGIR together with Form CP37F within one month after paying or crediting payment to the non-resident person. The following particulars are to be furnished in the Form CP37F:
- (a) Name, address and income tax reference number of the payer;
 - (b) Full name, passport number (if applicable), address, country and income tax reference number of the payee;
 - (c) Copies of invoice or debit note (if applicable); and
 - (d) Bank remittance slip or other documentary evidence showing the date and amount that is paid or credited.

Form CP37F can be downloaded from the IRBM website at <http://www.hasil.gov.my>.

- 12.2 Form CP37F together with the payment of withholding tax has to be submitted to the Collection Branch at the following addresses according to the location of the branch that is handling the income tax file of the payer:

STATES	ADDRESS
Peninsula Malaysia	Lembaga Hasil Dalam Negeri Malaysia Cawangan Pungutan Tingkat 15, Blok 8A Kompleks Bangunan Kerajaan Jalan Duta, Karung Berkunci 11061 50990 Kuala Lumpur
Sabah & WP Labuan	Lembaga Hasil Dalam Negeri Malaysia Unit Pungutan Tingkat Bawah, 3 & 4 Wisma Hasil Jalan Tuanku Abdul Rahman 88600 Kota Kinabalu
Sarawak	Lembaga Hasil Dalam Negeri Malaysia Unit Pungutan Aras 1, Wisma Hasil No.1, Jalan Padungan 93100 Kuching

Unlike other tax payments, withholding tax cannot be paid through the banks.

- 12.3 In cases where the income tax reference number of the payee is not available when filling up the Form CP37F, the payer can leave the relevant column blank. The Collection Branches upon receipt of Form CP37F would carry out immediate registration of the income tax reference number for the payee. Where necessary, the payer may request for the income tax reference number of the payee from Non-Resident Branch by writing in or sending through facsimile the application letter together with full details of the payee to:

Lembaga Hasil Dalam Negeri Malaysia
Cawangan Tidak Bermastautin
Tingkat 10, Blok 11
Kompleks Bangunan Kerajaan
Jalan Duta
50600 Kuala Lumpur
Fax. Number: 03-6201 9745 / 6201 2417

- 12.4 The DGIR may allow an extension of time for tax deducted to be paid over under special circumstances depending on the merits of each case.

13. Documents required

Before a payer from Malaysia makes a payment to a non-resident person, the nature of that payment to the recipient has to be determined to ascertain whether that



payment is subject to tax. If it is proven that the said payment is business income to the recipient, there is no need to deduct tax from that payment to the non-resident person. Among the documentation that a payer should keep for audit purposes in order to substantiate the determination of the nature of the payment to the non-resident are as follows:

- (a) copy of the business contract or agreement;
- (b) copy of an auditor's confirmation that verifies the income derived by the non-resident person is in the ordinary trade or profession of that person;
- (c) copy of the non-resident person's audited accounts;
- (d) copy of a notice of assessment of the non-resident person; and
- (e) copy of a business registration or license of the non-resident person.

The above-mentioned documents are meant to give some guidance on the documentary evidence necessary to prove the nature of the payment received by the non-resident person and are not exhaustive. These documents must be certified as true copies by either the issuing agency or a notary public. Each case will be examined based on its own facts and circumstances. The facts of the case may indicate that the income received by the non-resident person is income falling under paragraph 4(f) of the ITA although the documents presented prove otherwise.

14. Gains or profit received from offshore companies

Pursuant to the Income Tax (Exemption) (No. 4) Order 2009 [P.U.(A) 389/2009], any gains or profit falling under paragraph 4(f) of the ITA received by a non-resident from an offshore company is tax exempt with effect from 01.01.2009. An *offshore company* has the same meaning as defined under the Labuan Offshore Business Activity Act 1990 (LOBATA), that is, an offshore company incorporated under the Offshore Companies Act 1990 and includes a foreign offshore company registered under that Act, a licensed Malaysian offshore bank, an offshore limited partnership and an offshore trust.

15. Effective date

This Ruling is effective from 1 January 2009.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**