

e-CTIM TECH-DT 6/2014

13 February 2014

TO ALL MEMBERS

TECHNICAL

Direct Taxation

**PUBLIC RULING NO. 1/2014 – WITHHOLDING TAX ON SPECIAL CLASSES OF INCOME**

The Inland Revenue Board (IRB) of Malaysia issued PR No. 1/2014 on 23 January 2014. The PR replaces [PR No. 4/2005](#) dated 12/9/2005, [Addendum to PR No. 4/2005](#) dated 30/11/2007 and [Second Addendum to PR No. 4/2005](#) dated 4/1/2010.

The contents are summarized below:

Para-graph	Heading	Subject/ Salient points
1	Objective	To provide explanation on the special classes of income under <a href="#">S4A</a> of the Income Tax Act 1967 ("ITA"), deduction of tax from such income and consequences of failure to deduct tax.
2	Summary of Changes	Summary of changes made to PR 4/2005 that has been replaced by this PR.
3	Related Provisions	Sections 4A, 6(1)(e), 15A, 24(8), 39(1)(j), 109B, 109H and Part V of Schedule 1 the ITA.
4.	Interpretation	Meanings of the words "individual"; "Director General"; "person"; "Special Commissioners"
	<b>Highlight of change:</b> Meanings of the words "disbursements or out-of-pocket expenses" and "reimbursements found in para 3.7 and 3.8 respectively of PR 4/2005 have been deleted. (See "Highlight of change for para. 9 and 10.)	
5	Special Classes Of Income Chargeable To Tax	Income specified under sections 4A(i), 4A(ii) and 4A(iii) of the ITA.
6.	Derivation Of Special Classes Of Income	Income under sections 4A(i) to 4A(iii) are deemed derived from Malaysia if responsibility for the payment lies with the Government, State Government, or a local authority, or a person who is resident in Malaysia, or if the payment is charged as an expense in the accounts of a business carried on in Malaysia. (para 6.1)
7	Services Rendered In Connection With The Use Or Installation Or Operation Of Assets [Paragraph 4A(i) of ITA	Relates to payments for services performed in Malaysia, rendered by a non-resident person or his employee, in connection with: (a) the use of property or rights belonging to the non-resident person; or

	1967]	(b) the installation or operation of plant, machinery or other apparatus purchased from him. (Examples 2 and 3)
8	Technical Advice, Assistance Or Services Rendered In Connection With Technical Management Or Administration [Paragraph 4A(ii) of ITA 1967]	The scope of para. 4A(ii) covers payments for technical assistance, non-technical assistance, technical services or non-technical services rendered in connection with scientific, industrial or commercial undertaking, venture, project or scheme. (para. 8.2) Also includes management or administrative services in connection with the above types of projects or schemes. (para 8.4) (Examples 5, 6, 7, 9, 10, 11,12)
9	Rent Or Other Payments For Use Of Moveable Property [Paragraph 4A(iii) of the ITA 1967]	<ul style="list-style-type: none"> <li>- Activities that fall within the scope of S4A(iii); (slot hire; leasing of ships; time charter; voyage charter) [para 9.1]</li> <li>- Income that does not fall within the scope of S4A(iii) (freight charges) [para.9.2]</li> <li>- Income that are taxable under S4A(iii) but exempted under specific Exemption Orders [para. 9.3]</li> </ul>
10	Reimbursements	Reimbursements (meaning explained in para.10.1) are considered as being part of the contract value for services rendered or for rent or payments for the use of moveable property, and are subject to withholding tax under S109B. (para. 10.2)
	<p><b>Highlight of change:</b> – Prior to 1/1/2009, reimbursements relating to hotel accommodation in Malaysia are regarded as falling within S4A and subject to withholding tax. (para. 10.3 and Example 13)</p> <p>With effect from 1/1/2009, reimbursements on hotel accommodation is not included in technical service fee, therefore not subject to withholding tax. (para 10.4 and Example 14)</p>	
11	Disbursements	Disbursements are considered as being part of the contract value for services rendered or for rent or payments for the use of moveable property and regarded as income falling within S4A and subject to withholding tax. (para. 11.1)
	<p><b>Highlight of change:</b> – Prior to 1/1/2009, disbursements on hotel accommodation was included as gross income under S4A for the purposes withholding tax. (para 11.2 and Examples 15, 16)</p> <p>With effect from 1/1/2009, disbursements on hotel accommodation are not included in gross income under S4A for the purposes of withholding tax. (para. 11.3 and Example 17)</p>	
12	Deposits And Advance Payments	Non-refundable deposit and advance payment for services rendered or in respect of the use of any moveable property under S4A of the ITA are subject to withholding tax under S109B. (Examples 18 and 19)
13	Payments Which Are Not Subject To Withholding Tax	Types of payments to non-residents (Examples 20 to 23) and income of non-resident persons (para 13.2 to 13.5) which are not subject to withholding tax.

14	Tax Rate	Income under S4A of the ITA is charged at the rate of 10% on the gross amount.(para. 14.1) but where there is a DTA with a particular country, the preferential rate in the DTA applies. (para 14.2)
15	Remittance Of Tax Deducted	Procedures for remittance of tax (e.g use of Form 37D [Example 26]) and location of Branches to which tax is to be remitted in East and West Malaysia (para15.2).
16	Consequences Of Not Deducting And Remitting Tax	<p>If there is a failure to deduct and remit withholding tax, the amount which the payer fails to pay is increased by <u>10% of the amount of withholding tax which he fails to pay</u> (see <i>Highlight of change below</i>) and the total sum shall be a debt due from him to the Government, and shall be payable to the DGIR (para. 16.1)</p> <p>From 1/1/2011, the DGIR is empowered to impose a penalty under S113(2) of the ITA if-</p> <ul style="list-style-type: none"> <li>a) withholding tax is paid after the due date for submitting the return form for a year of assessment that relates to the payment of S4A income, and</li> <li>b) a deduction for expenses related to such payment is made in the return furnished or claimed in arriving at the adjusted income of the payer.</li> </ul> <p>(see para 16.4 and Examples 29 and 30)</p> <p><b><u>Highlight of change:</u></b> - Prior to 2/9/2006, (if there is a failure to deduct and remit withholding tax) the amount of payment to be made is increased by <u>10 % of the payment liable to deduction of tax</u> (Example 28).</p>
17	Appeal By Taxpayer On Payment Of Withholding Tax	From 1/1/2013, a payer who is liable to pay withholding tax under S109B of the ITA may appeal to the Special Commissioners if the basis is that the withholding tax is not liable to be paid under the ITA 1967, except under specified circumstances.
18	Examination Of Transactions	The DGIR reserves the right to examine the position of a transaction more closely where circumstances so require.
19	Clarification On Due Date Of Payment	If the last day of the period for remitting payment is a weekly holiday or a public holiday, the period will include the next working day. (Example 36)
20	Glossary	Meanings of certain terms found in the PR.

You may read the [PR](#) in full at the IRB website.

#### Disclaimer

This document is meant for the members of the Chartered Tax Institute of Malaysia (CTIM) only. CTIM has taken all reasonable care in the preparation and compilation of the information contained in this E-CTIM. CTIM herein expressly disclaims all and any liability or responsibility to any person(s) for any errors or omissions in reliance whether wholly or partially, upon the whole or any part of this E-CTIM.