

TECHNICAL

Direct Taxation

PUBLIC RULING 6/2017 – WITHHOLDING TAX ON INCOME OF A NON-RESIDENT PUBLIC ENTERTAINER

Lembaga Hasil Dalam Negeri Malaysia (LHDNM) has issued the above Public Ruling (PR) dated 12 October 2017 (reported in our [e-CTIM TECH-DT 72/2017](#) dated 16 October 2017).

Objective

The PR aims to explain the tax treatment of income received by a non-resident public entertainer in Malaysia (NRPE), withholding tax (WHT) requirements relating to that income and the consequences of any failure to comply with such requirements.

The following is a summary of the contents of the PR.

Paragraph #	Heading (<i>in italics</i>) & Summary (Sections cited refer to sections of the ITA, unless otherwise stated.)
1	<i>Objective</i> States the objective of the PR.
2	<i>Relevant Provisions of the Law</i> Lists the sections that are applicable under the Income Tax Act 1967 (ITA) and other supplementary legislation.
3	<i>Interpretation</i> Provides definitions of words found in the PR. (The words underlined below are defined in this paragraph.)
4	<i>Services Performed or Rendered in Malaysia by a NRPE</i> S109A provides that the provisions of S109 and S110 are applicable to income from such services.
5	<i>NRPE</i> <ul style="list-style-type: none"> A NRPE means a <u>non-resident</u> (NR) <u>individual</u> who carries out the following activities: <ul style="list-style-type: none"> (a) a solo or group performance as an actor, model, circus performer, compere, dancer, entertainer, musician, singer, other artiste, or the exercise of any profession, vocation or employment of a similar nature for cultural, educational, entertainment, religious or any other purposes; (b) the use of the NR individual's intellectual, artistic, musical, personal or physical skill or character for cultural, educational entertainment, religious or any other purposes; (c) lecture, speech, or talk for any purpose; or (d) a sporting event or sporting competition of any nature. The above activities of a NRPE may be carried out through the medium of live entertainment, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or television or radio broadcast. Individuals who work behind the scenes in an arts-related activity (directors, producers, choreographers etc.) or a sports-related activity (trainers, coaches etc.) do not come within the meaning of <u>public entertainers</u>.
6	<i>Residence status</i> <ul style="list-style-type: none"> In general, a public entertainer is treated as NR if he is in Malaysia for less

	<p>than 182 days in a calendar year.</p> <ul style="list-style-type: none"> Residence status is determined in accordance with the provisions of S7 of the ITA. Please also refer to PR No. 6/2011 – “Residence Status of Individuals”.
7	<p>WHT on Payments to a NRPE A NRPE rendering services in Malaysia may be exercising a profession, vocation or employment. Income derived from such services rendered is taxable in Malaysia.</p>
7.1	<p>Examples 1 to 9 are examples of NRPE receiving payments in Malaysia which are subject to WHT requirements under S109A.</p>
7.2	<p>Example 10 illustrates a situation where the provisions of S109F may be applied on a <u>person</u> not considered as a public entertainer, but receiving payment which comes under S4(f) of the ITA.</p>
7.3	<p>Examples 11 and 12 are examples of cases where a public entertainer under an employment contract performs in Malaysia for less than 60 days.</p>
7.4	<p>Both monetary and non-monetary payments to a NRPE are included in his gross income which is subject to WHT under S109A. Such payments include fees, prize money, allowances as well as reimbursements for benefits like accommodation, meals and airfare. (Example 13)</p>
7.5	<p>Other than fees for actual performances, a NRPE may receive other payments, (e.g. appearance fees, image fees) which are also subject to WHT. (Examples 14 to 16)</p>
8	<p>Tax Rate on Income of NRPE The rate of tax is 15% on gross income under Schedule 1, Part II of the ITA.</p>
9	<p>Computations of tax</p>
9.1	<p>Tax is computed on the gross remuneration or other income of the NRPE from services rendered in Malaysia. Where services are rendered as a member of group or a team, tax is computed on the collective income of the members in the group/team or the value of the contract, whichever is applicable.</p>
9.2	<p>The proportion of a public entertainer's worldwide income from concerts, sponsorship and such other income that is chargeable to tax in Malaysia is dependent on the wording of the contract, and his worldwide income must be apportioned on a just and reasonable basis to determine the amount that is connected to his performance in Malaysia. The formula for apportioning the income is as follows:</p> $\frac{\text{Total number of days working in Malaysia in a year}}{\text{Total number of days working worldwide in a year}} \times \text{Gross income}$ <p>Or</p> $\frac{\text{Total number of concerts performed in Malaysia in a year}}{\text{Total number of concerts performed worldwide in a year}} \times \text{Gross income}$
9.3	<p>Computations of WHT borne by a public entertainer. Examples 17 to 22 show how the amount of WHT is computed.</p>
10	<p>Application to Film and Perform in Malaysia Applications for filming and performances by foreign artistes in Malaysia are processed by the Central Agency for Application for Filming and Performance by Foreign Artistes (PUSPAL). The PUSPAL Guidelines are available on the website at http://epuspal.kkmm.gov.my/</p>
11	<p>Public Entertainers Other than Filming and Foreign Artistes Information relating to a NRPE who is attending or performing in any sports event, tournament, competition or other event in Malaysia, who does not fall under the PUSPAL Guidelines, is still required to be submitted to the IRBM</p>

	before the event. The documents to be submitted and the addresses of the LHDNM branches to which they are to be submitted are listed in this paragraph .
12	<p><i>Remittance of Tax</i></p> <ul style="list-style-type: none"> Under the WHT mechanism, tax is required to be deducted at source from the income of a NRPE and must be remitted to the DGIR within 1 month of paying or crediting the payment to the NRPE. The responsibility for this lies with the payer, as provided under S109A. The same responsibility is imposed on the sponsor or organizer of an event that falls under the PUSPAL Guidelines, or a sports event or competition that involves the participation of a NRPE. The procedure for remitting WHT and addresses of the relevant payment centres are stated in paragraph 12.2.
13	<p><i>Consequences of Not Remitting Tax</i></p> <p>The consequences are:</p> <ul style="list-style-type: none"> The amount that the payer fails to pay is increased by a sum equal to 10% of that amount, and the total sum becomes a debt due to the Government; Under S39(1)(q), any payment made as remuneration for services rendered by a NRPE, if tax has not been deducted therefrom, is not allowed as an expense in the computation of adjusted income of the payer. However, if the payer subsequently pays the WHT plus the increased amount, the disallowed payment can be subsequently allowed under the proviso to S39(1)(q). In addition to the increased sum due to late payment mentioned above, the DGIR is empowered to impose a penalty under S113(2) under specified conditions. Please refer to paragraph 13.3 for the detailed explanation of the conditions for applying S113(2).
14	<p><i>Appeal by a Payer on Payment of WHT</i></p> <p>Effective from 1.1.2013, a payer of WHT under S109A may appeal to the SCIT under S109H by reason that such WHT is not liable to be paid under the ITA. The appeal must be made within 30 days of the date the payment is due to be made to the DGIR (and is subject to the conditions stipulated in S109H).</p>
15	<p><i>Double Taxation</i></p> <p>Malaysia has entered into agreements for the avoidance of double taxation with a number of countries. The article in these agreements that applies to artistes and sportsmen provides that the country in which the activities of a NRPE are performed is allowed to tax the income derived from such activities.</p>
16	<p><i>Non-application</i></p> <p>Please refer to this paragraph for the full list of the classes of persons or individuals and types of income on which S109A is not applicable.</p>
17	<p><i>Examination of transaction</i></p> <p>The DGIR reserves the right to examine the position of a transaction more fully where circumstances require.</p>

Members may read the PR in full at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [PR No. 6/2017](#) so that we may raise them to the LHDNM.

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