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**TECHNICAL**

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**Direct Taxation**

**PRACTICE NOTE NO. 1/2018**

**TAX TREATMENT ON DIGITAL ADVERTISING PROVIDED BY A NON-RESIDENT**

This [Practice Note \(PN\)](#) dated 16 March 2018 (please refer to our [e-CTIM TECH-DT 24/2018](#) dated 29 March 2018) was issued to provide guidance on withholding tax (WHT) on income from digital advertising provided by a non-resident (NR).

Its contents are summarized in the following table:

Para.	<i>(All sections cited are from the Income Tax Act 1967 (ITA))</i>	
<b>2</b>	<b>Tax treatment of payment to NR related to digital advertising</b>	
2.1	NR has no permanent establishment (PE) in Malaysia (under the relevant DTA) or no business presence	WHT under S109 if payment is royalty income of the NR under the ITA; or
		WHT under S109B if the payment comes within the scope of S4A(ii)
2.2	NR has a PE or business presence in Malaysia	Payment constitutes business income of the NR derived from Malaysia, taxable under S4(a).
<b>3</b>	<b>Criteria to determine whether S109 or S109B is applicable</b>	
3.1	S109 applicable	if payment is for purchase or use of (for e.g.) an application (Apps) that allows the payer to create its own advertisement campaign; or
	S109B applicable	if purchase or use of an Apps is not involved, but payment is merely for provision of service by the NR. (NR relied on to provide service that deals with all aspects of digital advertising.)

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

You may write to the Institute at [technical@ctim.org.my](mailto:technical@ctim.org.my) or [secretariat@ctim.org.my](mailto:secretariat@ctim.org.my) in respect of any suggestions, concern or comments you may have on the [PN](#) so that we may raise them to the LHDNM.

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