

**TECHNICAL**

**Direct Taxation**

**PUBLIC RULING NO. 2/2019 - DIRECTOR'S LIABILITY**

The Inland Revenue Board of Malaysia (LHDNM) issued [Public Ruling \(PR\) No.2/2019](#) on 14 March 2019 (reported in our [e-CTIM TECH-DT 25/2019](#) dated 21 March 2019).

The contents of the PR are summarized below:

Para. #	All sections quoted below refer to sections of the ITA unless otherwise stated.		
1	<p><b>Objective</b></p> <p>The objective is to explain the liabilities of a company director for tax payable by the company, which refers to any tax due and payable by the company, and any debt due and payable by the company as an employer arising from tax deductions from emoluments and pensions under the Monthly Tax Deduction (MTD).</p>		
2	<p><b>Relevant Provisions of the Law</b></p> <p>The provisions in the Income Tax Act 1967 (ITA) which relates to this PR are <a href="#">stated here</a>.</p>		
3	<p><b>Interpretation</b></p> <p>The meanings of words and phrases used in this PR are given here. (The meanings of words underlined below are found in this paragraph.)</p>		
4	<p><b>Introduction</b></p> <ul style="list-style-type: none"> <li>- Under S75A, a director of a <u>company</u> is held responsible for any tax or debt due and payable by the company, such sums due being recoverable from the directors.</li> <li>- Any person holding the position of a director during the period in which the tax or debt is liable to be paid, is <i>jointly and severally liable</i>* for the tax or debt payable by the company.</li> </ul> <p>* The meaning of this phrase is explained in paragraph 4.3</p>		
5	<p><b>Meaning of a Director</b></p> <p>The meaning of "Director" as provided under S75A(2) is summarized in a diagram under this paragraph, which is reproduced below:</p> <div style="text-align: center;"> <p>A director means any person who is -</p> <pre> graph TD     A[A director means any person who is -] -- AND --&gt; B[Occupying the position of a director, (by whatever name called) including any person who is concerned in the management of the company's business]     A -- AND --&gt; C[either]     C -- OR --&gt; D[On his own, the owner of, in control of not less than 20% of the <u>ordinary share capital</u> of the company]     C -- OR --&gt; E[With one or more associates, able directly or through the medium of other companies or by any other indirect means to control not less than 20% of the ordinary share capital of the company]                     </pre> </div> <p>The following examples are provided:</p> <table border="0"> <tr> <td style="vertical-align: top;"> <p><u>Example</u></p> <p>1</p> </td> <td style="vertical-align: top;"> <p>Persons who are "directors" under S75(A)(2) -</p> <p>- Person who meets the conditions of S75(A)(2) holds the post of "director" (by whatever name it is called).</p> </td> </tr> </table>	<p><u>Example</u></p> <p>1</p>	<p>Persons who are "directors" under S75(A)(2) -</p> <p>- Person who meets the conditions of S75(A)(2) holds the post of "director" (by whatever name it is called).</p>
<p><u>Example</u></p> <p>1</p>	<p>Persons who are "directors" under S75(A)(2) -</p> <p>- Person who meets the conditions of S75(A)(2) holds the post of "director" (by whatever name it is called).</p>		

	<p>2 - Person holding more than 20% of the <u>ordinary share capital</u> of a company is a “director”.</p> <p>3 - A married couple jointly holding more than 20% of the ordinary share capital are “directors” of the company.</p> <p>4 - Persons holding more than 20% of the ordinary share capital, whether directly or indirectly, are “directors”.</p>
6	<p><b>Recovery of a Company’s Tax and Debt from Directors</b> A person who is a “director” under S75(A)(2) is jointly and severally liable for –</p> <p>(a) the payment of corporate tax: and</p> <p>(b) Monthly Tax Deduction (MTD) (Example 5)</p>
7	<p><b>Company Directors Who are Liable</b> A company director who is liable under S75A is a person who is –</p> <p>(a) a director during the period in which tax was due and payable by the company, i.e. from the date of service or deemed service, of the Notice of Assessment (NA). (Example 6)</p> <p>(b) the director during the period in which the debt (relating to MTD) is liable to be paid by the company. (Examples 7 and 8)</p>
8	<p><b>Company Directors Who Are Not Liable</b> The following company directors are not liable –</p> <p>(a) a person who is director after the NA is served or deemed to have been served; (Example 9)</p> <p>(b) a person who ceases to be a director before the NA is served/ deemed to have been served; (Example 10)</p> <p>(c) a director of a company which has taxes or debts arising after the winding up of the company commences. (The directors are no longer liable when a company is under winding up proceedings.) (Example 11)</p>
9	<p><b>Tax Recovery Action</b> Actions that can be taken against those who are directors of a company under S75A are –</p> <p>(i) Preventing the person from leaving the country by imposing a <u>stoppage order</u> on that person under S104, with assistance from the <u>Commissioner of Police</u> and <u>Director of Immigration</u>. [Details of the process of issuing a Certificate of Stoppage Order are found in <u>paragraph 9(1)(b)</u>]</p> <p>(ii) Filing a civil suit under S106(1) against both the company and the directors of the company (both named as Defendants). [Refer <u>paragraph 9.2</u>]</p>
10	<p><b>Disclaimer</b> The examples in this PR are for illustration purposes only and are not exhaustive.</p>

Please 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](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 PR No.2/2019.

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