



## **INLAND REVENUE BOARD OF MALAYSIA**

### **WITHHOLDING TAX ON SPECIAL CLASSES OF INCOME**

**PUBLIC RULING NO. 1/2014**

*Translation from the original Bahasa Malaysia text*

**DATE OF ISSUE: 23 JANUARY 2014**



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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.

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

**1. Objective**

The objective of this Ruling is to explain the -

- (a) special classes of income that are chargeable to tax under section 4A of the Income Tax Act 1967 (ITA 1967),
- (b) deduction of tax from special classes of income, and
- (c) failure of not deducting and remitting tax deducted from special classes of income.

**2. Summary Of Changes**

This Ruling is published to replace Public Ruling No. 4/2005 issued on 12.9.2005, Addendum to Public Ruling No. 4/2005 issued on 30.11.2007 and Second Addendum to Public Ruling No. 4/2005 issued on 4.1.2010. The changes made to these Public Rulings are summarised as follows:

Paragraph In Public Ruling No. 4/2005	Changes In This Ruling		
	Paragraph	Item	Reference
3.1	4.2	Renumbered	
3.2	20.1		
3.3	20.2		
3.6	20.4		
3.9	20.5		
3.4	4.3	Replaced	Clarification
3.5	20.3		
3.7	None	Deleted	
3.8			
None	4.1	New	Clarification
	4.4		
4	5	Renumbered	
5	6		
5.3	6.3	Previous Example 1 replaced	Clarification

Paragraph In Public Ruling No. 4/2005	Changes In This Ruling		
	Paragraph	Item	Reference
6	7	Renumbered	
7	8		
7.5	8.5	<ul style="list-style-type: none"> <li>• Replaced</li> <li>• New Example 12 is inserted</li> </ul>	Clarification
8	9	Renumbered	
8.1	9.1	Replaced	Clarification
9	10	Renumbered	
None	10.3	<ul style="list-style-type: none"> <li>• New</li> <li>• Previous Example 12 is replaced by Example 13</li> </ul>	Clarification (New)
	10.4	<ul style="list-style-type: none"> <li>• New</li> <li>• New Example 14 is inserted</li> </ul>	
10	11	Renumbered	
10.1	11.1	Replaced	Clarification
None	11.2	<ul style="list-style-type: none"> <li>• New</li> <li>• Previous Examples 13 is replaced by Example 15</li> <li>• Previous Example 14 renumbered as Example 16</li> </ul>	
	11.3	<ul style="list-style-type: none"> <li>• New</li> <li>• Previous Example 1 in Second Addendum to Public Ruling No. 4/2005 is renumbered as Example 17</li> </ul>	

Paragraph In Public Ruling No. 4/2005	Changes In This Ruling		
	Paragraph	Item	Reference
11	12	<ul style="list-style-type: none"> <li>Renumbered</li> <li>Examples 15 and 16 renumbered as Examples 18 and 19</li> </ul>	
12	13	<ul style="list-style-type: none"> <li>Renumbered</li> <li>Examples 17 to 20 renumbered as Examples 20 to 23</li> </ul>	
13	14	Renumbered	
13.1	14.1	<ul style="list-style-type: none"> <li>Replaced</li> <li>Examples 21 and 22 replaced by Examples 24 and 25</li> </ul>	Clarification
14	15	Renumbered	
14.1	15.1	<ul style="list-style-type: none"> <li>Replaced</li> <li>Previous Example 23 replaced by Example 26</li> </ul>	Clarification
14.3	15.3		
15	16	<ul style="list-style-type: none"> <li>Replaced</li> <li>Previous Examples 24 and 25 replaced by Examples 27 and 29</li> <li>Previous Example 1 in Addendum to Public Ruling No. 4/2005 is replaced by Example 28</li> <li>New Examples 30, 31, 32, 33, 34, 35 and 36 inserted</li> </ul>	Clarification
None	17	New	Budget 2013
16	18	Renumbered	

Paragraph In Public Ruling No. 4/2005	Changes In This Ruling		
	Paragraph	Item	Reference
None	19	New	Clarification
None	20	New	Clarification

### 3. Related Provisions

The provisions of the ITA 1967 related to this Ruling are section 4A, paragraph 6(1)(e), section 15A, subsection 24(8), paragraph 39(1)(j), section 109B, section 109H and Part V of Schedule 1.

### 4. Interpretation

The words used in this Ruling have the following meaning:

- 4.1 “Individual” means a natural person.
- 4.2 “Director General” means Director General of Inland Revenue.
- 4.3 “Person” includes a company, a body of persons, a limited liability partnership and a corporation sole.
- 4.4 “Special Commissioners” means the Special Commissioners of Income Tax referred to in section 98 of the ITA 1967.

### 5. Special Classes Of Income Chargeable To Tax

The income of a non-resident person from the following special classes of income is chargeable to tax in Malaysia if it is derived from Malaysia:

- (a) amounts paid in consideration of services rendered by the non-resident person or his employee in connection with:
  - (i) the use of property or rights belonging to him, or
  - (ii) the installation or operation of any plant, machinery or other apparatus purchased from him [paragraph 4A(i) of the ITA 1967],
- (b) amounts paid to a non-resident person in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, scheme [paragraph 4A(ii) of the ITA 1967], or

- (c) rent or other payments made under any agreement or arrangement to a non-resident person for the use of any moveable property [paragraph 4A(iii) of the ITA 1967].

## 6. Derivation Of Special Classes Of Income

- 6.1 The gross income in respect of the amounts paid under paragraphs 4A(i), 4A(ii) and 4A(iii) of the ITA 1967 shall be deemed to be derived from Malaysia if:
  - (a) the responsibility for the payment lies with the Government, a State Government or a local authority,
  - (b) the responsibility for the payment lies with a person who is resident in Malaysia for that basis year, or
  - (c) the payment is charged as an outgoing or expense in the accounts of a business carried on in Malaysia.
- 6.2 Income under paragraphs 4A(i) and 4A(ii) of the ITA 1967 are deemed derived from Malaysia if such services are performed in Malaysia.
- 6.3 In a case where the contract requires performance of services both within and outside Malaysia, the proportion of contract value that is attributable to services performed in Malaysia must be ascertained in a manner that is fair and justifiable. Apportionment of the contract value should be based on the value of services performed in Malaysia. It is important that the contract value be apportioned on a reasonable basis based on the facts of each case as only the portion of contract value that is attributable to services performed in Malaysia is subject to withholding tax under section 109B of the ITA 1967.

### Example 1

Syarikat Maju Sdn Bhd, a Malaysian company signed an agreement with Excel Ltd, a non-resident company, to provide a report addressing the industry structure, market conditions and technology value for the Multimedia Super Corridor Grant Scheme. The consultant from Excel Ltd was in Malaysia for 6 days for preliminary discussion on the project. The total number of days spent on the whole project was 42 days. The total fees paid for the project was RM20,000. The report was later completed overseas.

The proportion of the project value attributable to the services performed in Malaysia is computed on time cost.

Total fees for the project	RM20,000
Number of days spent on the whole project	42 days
Number of days spent in Malaysia	6 days
Time cost in Malaysia	RM2,857.14 (6/42 X 20,000)

The fees of RM2,857.14 is subject to a withholding tax of 10% under section 109B of the ITA 1967.

**7. Services Rendered In Connection With The Use Or Installation Or Operation Of Assets [Paragraph 4A(i) Of The ITA 1967]**

7.1 Paragraph 4A(i) of the ITA 1967 consists of amounts paid in consideration of services which are 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
- (b) the installation or operation of any plant, machinery or other apparatus purchased from him.

If the above is in relation to a contract project carried out through a permanent establishment [where a Double Taxation Agreement (DTA) applies] or where there is a business presence in Malaysia, then the withholding tax provision under section 107A of the ITA 1967 applies.

7.2 The following are examples of services that generate income falling within the scope of paragraph 4A(i) of the ITA 1967:

- (a) Provision of personnel for advisory or supervisory services

**Example 2**

A Sdn Bhd buys a power plant from B Ltd, a non-resident company. The terms of the purchase include installation of the plant by B Ltd. For this purpose, B Ltd sends two of its engineers to Malaysia to supervise the installation and operation of the plant. The fee paid to B Ltd for the services is RM100,000.

The fee paid to B Ltd, a non-resident company, is subject to 10% withholding tax on the gross amount.

- (b) Installation and commissioning services

**Example 3**

Champ Ltd, a company resident in Japan, sold 3 stainless steel boilers to Doublesteel Sdn Bhd, a steel manufacturer in Malaysia at a price of RM1,000,000. It was agreed that an additional sum of RM100,000 was payable to Champ Ltd for the service of installation and commissioning of the boilers.

The sum of RM100,000 is chargeable to tax in Malaysia under paragraph 4A(i) of the ITA 1967. Therefore, withholding tax at the rate of 10% on the gross amount should be deducted.

**8. Technical Advice, Assistance Or Services Rendered In Connection With Technical Management Or Administration [Paragraph 4A(ii) of the ITA 1967]**

- 8.1 Paragraph 4A(ii) of the ITA 1967 consists of amounts paid to a non-resident person in consideration of technical advice, assistance or services, which are performed in Malaysia, rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme.
- 8.2 The scope of payments made to a non-resident person under paragraph 4A(ii) of the ITA 1967 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.
- 8.3 Technical advice, assistance or services rendered in connection with technical management of any scientific, industrial or commercial undertaking, venture, project or scheme would include the passing over or utilisation of expert or specialised knowledge, skills or expertise. Examples of technical management would include the provision of marketing, consultancy and legal services, supply of technical and software personnel and inter-company technical services.
- 8.4 Administration would cover management or administrative services in connection with any scientific, industrial or commercial undertaking, venture, project or scheme. Examples of administration would include non-technical assistance, non-technical services, management and administrative functions such as planning, direction, control, co-ordination, accounting, financial management consultation and labour negotiations. However, the allocation of head office expenses:

- (a) by a non-resident head office to the Malaysian branch, or

(b) by a non-resident parent company to the Malaysian subsidiary,

for ordinary day to day or routine administration expenses would be excluded from the above scope if it is shown that the payments to the non-resident head office or to the non-resident parent company are in no way related to the performance of any specialised service.

#### Example 4

Koizumi Appliances Ltd, a Japanese company, trading in electrical goods has a branch in Kuala Lumpur. The Japanese company performs certain clerical and administrative jobs such as invoicing and book keeping for its Kuala Lumpur branch for a monthly fee of RM3,000.

As the clerical and administrative jobs such as invoicing and book keeping are part of the day to day routine expenses and are in no way related to the performance of any specialised service by the head office in Japan for its Malaysian branch, they do not fall within the ambit of section 4A of the ITA 1967 and therefore are not subject to withholding tax under section 109B of the ITA 1967.

8.5 The following are examples of services that generate income falling within the scope of paragraph 4A(ii) of the ITA 1967:

(a) Management or marketing services

#### Example 5

KMN International Hotel Management Ltd, a Norwegian company, entered into an agreement with KMN Hotel (M) Sdn Bhd to provide hotel management and marketing services in Malaysia in connection with:

- (i) the supervision and control of the general manager,
- (ii) the supervision and co-ordination of staff training and development programmes, and
- (iii) the promotion and marketing plans for the hotel in Malaysia.

Under the terms of the agreement, the Malaysian company will pay a monthly fee based on 5% of the gross turnover to KMN International Hotel Management Ltd for the management and marketing services provided in Malaysia. In addition, an annual fee of 2% on gross overseas sales will be charged for marketing services performed overseas.

The monthly fees of 5% on the gross turnover is subject to 10% withholding tax under section 109B of the ITA 1967. The 2% on overseas marketing is not subject to withholding tax as the service is not performed in Malaysia.

(b) Consultancy services

(i) Fee for consultancy services includes reimbursement

**Example 6**

M & A Ltd, an architectural firm in London was engaged to provide plans for a modern hospital in Kuala Lumpur. Staff from the firm came several times to Malaysia for inspection of the site, discussions with the local company and finally delivered the master plan. The plans were drawn in its office in London. It was agreed that consultancy fees of RM1,000,000 would include reimbursements payable by monthly invoices based on the progress of work done. The agreement also provided an analysis of the fees charged.

The portion of the fees including the reimbursements related to the services performed in Malaysia is subject to withholding tax under section 109B of the ITA 1967. However, if it can be confirmed that M & A Ltd is tax resident in United Kingdom, then the withholding tax rate is 8% on the value of services performed in Malaysia pursuant to the DTA between Malaysia and United Kingdom.

(ii) Fee for consultancy services

**Example 7**

Jet Engineering (M) Sdn Bhd, entered into an agreement with Jet Engineering Services (Asia) Pte Ltd, a Singapore company. The Singapore company would provide specialist or technical personnel to carry out engineering inspection and rectification works in Port Dickson, Kuantan and Melaka for a period of 2 months. The fees agreed were RM300,000.

The fees of RM300,000 are subject to withholding tax at 10% as the services were wholly performed in Malaysia.

(iii) Monthly fees for consultancy services include reimbursement

**Example 8**

FGH (M) Sdn Bhd, is a hardware and software provider. The company had entered into an agreement with PQR Software Pte Ltd, an Indian company. PQR would provide personnel to work with FGH to supply and implement an Integrated Cash Management System in a Malaysian bank. It was agreed that FGH would pay monthly fees which included reimbursements such as air tickets, food and other related expenses.

The monthly fees are subject to withholding tax at 10% on the gross amount as the services are wholly performed in Malaysia.

(c) Legal services in connection with a debt or agency arrangement

**Example 9**

A legal firm resident in Singapore was engaged by a Malaysian company to advise on matters regarding a debt reduction agreement and an agency agreement. The services were performed wholly in Singapore.

Payment for the legal services will not be subject to withholding tax as the services are wholly performed outside Malaysia.

(d) Inter-company technical services

**Example 10**

Em Electric Canada Limited is a multi-national company dealing with different branded products in the field of telecommunications, process management, storage solutions, industrial automation and other related services. The Malaysian subsidiary, Em Technology Sdn Bhd, while undertaking projects for various Malaysian customers, always seeks assistance from the parent company or other subsidiaries not resident in Malaysia to provide technical training, project management and other related services.

Staff from the parent company and other subsidiaries are assigned to work in Malaysia for a few months or even sometimes up to a year depending on the project requirements. The salaries of the assigned staff are borne by the non-resident parent company or subsidiaries. The parent company or subsidiaries will issue debit notes to recover the staff cost and other reimbursements from Em Technology Sdn Bhd. A

debit note is issued as an allocation of cost depending on the nature of the jobs involved.

The amount on the debit note is subject to withholding tax at 10% on the gross amount as the services are wholly performed in Malaysia. In the event that part of the services is performed offshore, then only the value of the services performed in Malaysia is subject to withholding tax.

- (e) Specially-tailored training course

**Example 11**

A human resource management company in Singapore was engaged by a Malaysian company to conduct courses specially tailored to the needs of the Malaysian company. Courses were conducted both in Malaysia and Singapore.

The payment for the courses conducted in Malaysia is subject to withholding tax under section 109B of the ITA 1967.

- (f) Services pertaining to the entertainment industry that does not fall within the scope of a public entertainer

**Example 12**

A model from the USA arrived in Malaysia on 12.1.2014 for a magazine photo shoot. The model was paid RM100,000 for the one day photo shoot.

The fee received by the model for the photo-shoot is considered a special class of income for a commercial undertaking as there was no element of entertainment during her photo-shoot. The fee received by the model would be subject to withholding tax under section 109B of the ITA 1967.

**Note**

A photo-shoot of a model is generally used in the fashion industry. A model poses for a photographer at a studio where multiple photos are taken to find the best pose. A few examples are:

- (i) Modelling for a newspaper or magazine article, as well as billboards,
- (ii) Advertising a company's product, where the product is generally used by the model, and
- (iii) Modelling a new range of fashion designs for a store or designer.

Generally there is no element of entertainment in photo-shoots.

9. **Rent Or Other Payments For Use Of Moveable Property [Paragraph 4A(iii) of the ITA 1967]**

9.1 Paragraph 4A(iii) of the ITA 1967 consists of rents or other payments made to non-residents for the use of any moveable property which include rents or other payments made for the use of oil rigs, boats, ships, cars, aircraft or other equipment within or outside Malaysia. The following are activities falling within the scope of paragraph 4A(iii) of the ITA 1967:

(a) Slot hire

Slot hire is where the hirer has exclusive use of a particular slot in a ship to the exclusion of others. Payments paid for slot hire are subject to a withholding tax at 10% on the gross amount.

(b) Leasing of ships

The exclusive use of a ship which is chartered, whether bare boat or with crew. Payments made to non-residents who lease out ships fall within the ambit of paragraph 4A(iii) of the ITA 1967 and are subject to a withholding tax at 10% on the gross receipt.

(c) Time charter

Time charter is where a ship is chartered for a specific time. Thus, if a ship is chartered, say for 3 years, withholding tax at 10% on the gross amount must be deducted from the payment or the charter fees paid in respect of the use of the ship.

(c) Voyage charter

Voyage charter is in respect of a particular voyage, say from Port A to Port B. If a ship is chartered in respect of a particular voyage, the charter fee received is subject to withholding tax at 10% on the gross fees.

9.2 The following income does not fall within the scope of paragraph 4A(iii) of the ITA 1967:

Freight charges

Freight charges paid to non-residents in respect of export of goods are not within the scope of paragraph 4A(iii) of the ITA 1967 as freight charges are fees for the shipment of goods and not payments for the use of a moveable property.

9.3 The following income which is chargeable to tax under paragraph 4A(iii) of the ITA 1967 is specifically given exemption under the Income Tax (Exemption) Orders:

9.3.1 Pooling arrangements

A non-resident deriving income under paragraph 4A(iii) of the ITA 1967 consisting of payments made under an agreement or arrangement for participation in a pool by a company resident in Malaysia engaged in the business of transporting passengers or cargo by sea is specifically exempted from payment of income tax under the Income Tax (Exemption) (No.25) Order 1995 [P.U. (A) 322/1995]. Consequently, withholding tax under section 109B of the ITA 1967 shall not apply to the exempted income.

9.3.2 Income received from a Malaysian shipping company

- (a) A non-resident person in Malaysia deriving income under paragraph 4A(iii) of the ITA 1967 from a Malaysian shipping company, consisting of payments made under any agreement or arrangement for the use of a ship is specifically exempted from payment of income tax under the Income Tax (Exemption) Order 2007 [P.U.(A) 58/2007].

The income is in relation to the use of the ship on a voyage charter or time charter or bare boat charter. Consequently, withholding tax under section 109B of the ITA 1967 shall not apply to the exempted income. The exemption is effective from 2.9.2006.

- (b) For the purposes of this exemption, the words below have the following meaning:

“Bare boat” means a ship which is chartered without crew and the charterer has the exclusive use of the ship for a period or for a voyage,

“Malaysian ship” means a sea-going ship registered under the Merchant Shipping Ordinance 1952,

“Malaysian shipping company” means a resident company incorporated under the Companies Act 1965, which owns a Malaysian ship and carrying on a business of -

- (i) transporting passengers or cargoes by sea on a ship,  
or
- (ii) letting out a ship, and

“ship” means a sea-going ship other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel”.

9.3.3 Income derived from the rental of International Standard Organisation (ISO) containers by a Malaysian shipping company

A non-resident person who receives income derived from the rental of ISO containers by a Malaysian shipping company is exempted from withholding tax from 20.10.2001 under the Income Tax (Exemption)(No.24) Order 2002 [P.U.(A) 210/2002].

For the purpose of this subparagraph, Malaysian shipping company has the same meaning as in subparagraph 9.3.2(b).

## 10. Reimbursements

10.1 Reimbursements refer to out-of-pocket expenses incurred by the payee:

- (a) in the course of rendering services to the payer, or
- (b) in respect of the use of any moveable property,

and are subsequently reimbursed by the payer. Such expenses include the cost of airfare, travelling, accommodation, telephone and photocopying charges.

10.2 Reimbursements are considered as being part of the contract value for services rendered or for rent or payments made for the use of moveable property. As such, it is income of the payee under section 4A of the ITA 1967 and is subject to withholding tax at the rate of 10% on the gross amount under section 109B of the ITA 1967.

10.3 Prior to 1.1.2009 reimbursements relating to hotel accommodation in Malaysia are part of the gross income falling under section 4A of the ITA 1967 and are subject to withholding tax of 10% under section 109B of the ITA 1967.

### Example 13

KJ Pte Ltd, an Australian company, rendered technical service to Pillarworks Sdn Bhd in June 2008. The services were performed in Malaysia. KJ Pte Ltd issued an invoice dated 15.7.2008 for the value of RM15,000 which included reimbursements such as cost of air fare and hotel charges of RM5,000 incurred by the company.

These expenses were classified as travelling and accommodation expenses in the profit and loss account of Pillarworks Sdn Bhd.

The reimbursements of RM5,000 form part and parcel of the technical service fee, and are therefore subject to withholding tax under section 109B of the ITA 1967. Thus, Pillarworks Sdn Bhd is responsible to withhold 10% of the gross fee of RM15,000 i.e. RM1,500 and remit to the Director General of Inland Revenue (DGIR) within one month from the date of crediting the net technical service fee of RM13,500 to KJ Pte Ltd.

- 10.4 With effect from 1.1.2009, reimbursements on hotel accommodation are not included in the computation of gross income falling under section 4A of the ITA 1967 for the purposes of withholding tax. This exemption is aimed at reducing the cost of services provided by non-residents. Hotel accommodation means accommodation in a hotel, apartment hotel, service apartment, motel or hostel.

#### **Example 14**

The facts are the same as in Example 13 except that the services were performed in June 2009. The invoice dated 15.7.2009 was for the value of RM15,000 which included reimbursements such as cost of air fare and hotel charges of RM4,000 and RM1,000 respectively.

As the reimbursement for hotel accommodation is not included in the technical service fee, therefore this reimbursement is not subject to withholding taxes. Pillarworks Sdn Bhd is responsible to withhold 10% of the gross fee of RM14,000 (RM1,400.00) and remit to the DGIR within one month from the date of crediting the net technical service fee of RM13,600 to KJ Pte Ltd.

## **11. Disbursements**

- 11.1 Disbursements are out-of-pocket expenses incurred by the payer and paid to a third party on behalf of the payee -
- (a) in connection with services rendered by the payee, or
  - (b) in respect of the use of any moveable property.

Disbursements are considered as being part of the contract value for services rendered or for rent or payments made for the use of any moveable property. As such, it is income to the payee under section 4A of the ITA 1967 and is subject to withholding tax at the rate of 10% on the gross amount under section 109B of the ITA 1967.

- 11.2 Prior to 1.1.2009, disbursements on hotel accommodation was included in the computation of gross income falling under section 4A of the ITA 1967 for the purposes of withholding tax.

**Example 15**

SH Pte Ltd, a Singapore company, rendered technical service to Roadworks Sdn Bhd in September 2006. The services were performed in Malaysia. SH Pte Ltd issued an invoice dated 15.10.2006 for the value of RM1,000. Roadworks Sdn Bhd paid the cost of air fares of RM500 for the representative of SH Pte Ltd to Singapore Airlines (SIA). These expenses were classified as travelling expenses in the profit and loss account of Roadworks Sdn Bhd. Upon receiving the invoice, Roadworks Sdn Bhd paid RM900 to SH Pte Ltd and subsequently remitted the balance of RM100 to the Director General.

The disbursements or out-of-pocket expenses of RM500 incurred by Roadworks Sdn Bhd are subject to withholding tax under section 109B of the ITA 1967. Even though the payment for the airfare to SIA is made in full, withholding tax of RM50 (10% of RM500) should be borne by the payer and remitted to the DGIR within one month from the date of payment of the airfare. The total amount of withholding tax charged on the payee should be:

		RM	
10% X RM1,000	=	100.00	
10% X RM500	=	<u>50.00</u>	
		<u>150.00</u>	

The payer may subsequently recover the amount of tax of RM50.00 from SH Pte Ltd.

**Observation**

If Roadworks Sdn Bhd does not recover the tax of RM50 from SH Pte Ltd, this means that the RM500 disbursement or out-of-pocket expenses incurred by Roadworks Sdn Bhd is considered net of tax. As such, Roadworks Sdn Bhd has to regross the RM500 to determine the actual amount of withholding tax to be paid. The regrossing is computed as follows:

$$500 \quad \times \quad \frac{100}{90} \quad = \quad 555.55$$

The withholding tax on the RM500 is RM56 (RM556 less RM500) and not RM50. Please refer to paragraph 14.1 for further explanation.

**Example 16**

Scanoil Co Ltd, a Swedish company, rendered technical service to Malwell Malaysia Bhd. The service was performed in Malaysia from 15.3.2005 to 24.3.2005. In the course of performing the service, the representative from Scanoil Co Ltd stayed at Hotel Seri Malaysia in Kuala Lumpur. Malwell

Malaysia Bhd paid the hotel accommodation expenses of RM2,000 directly to Hotel Seri Malaysia on 24.3.2005. Upon completion of the service, Scanoil Co Ltd issued an invoice dated 28.3.2005 valued at RM150,000 to Malwell Malaysia Bhd for the service rendered. Malwell Malaysia Bhd settled the technical service fee to Scanoil Co Ltd on 15.4.2005 via telegraphic transfer.

As the technical service falls within the scope of section 4A of the ITA 1967 and is subject to withholding tax under section 109B of the ITA 1967, Malwell Malaysia Bhd should remit the withholding tax deducted of RM15,000.00 to the DGIR within one month from the date of payment to Scanoil Co Ltd., which is by 14.5.2005.

In addition, the hotel accommodation expenses of RM2,000 incurred and paid directly to Hotel Seri Malaysia by Malwell Malaysia Bhd in connection with the services provided by Scanoil Co Ltd are also subject to withholding tax under section 109B of the ITA 1967. Thus, Malwell Malaysia Bhd should remit the withholding tax applicable to the hotel accommodation expenses of RM200.00 to the DGIR within one month from the date of payment to Hotel Seri Malaysia, which is by 23.4.2005. The withholding tax on the hotel accommodation expenses shall be paid by Malwell Malaysia Bhd in advance and subsequently recovered from Scanoil Co Ltd. Malwell Malaysia Bhd should pay only RM134,800 to Scanoil Co Ltd, being the balance of the technical service fee after taking into account the amount of withholding tax paid on the hotel accommodation expenses.

The computation is illustrated as follows:

	RM
Technical service fee	150,000
Hotel accommodation expenses	<u>2,000</u>
Total amount subject to withholding tax	152,000
Less:	
Withholding tax (10%)	<u>15,200</u>
	136,800
Less:	
Payment made to Hotel Seri Malaysia	<u>2,000</u>
Payment due to Scanoil Co Ltd	<u>134,800</u>
	RM
Withholding tax payable on 23.4.2005	200
Withholding tax payable on 14.5.2005	<u>15,000</u>
Total withholding tax payable to the DGIR	<u>15,200</u>

11.3 With effect from 1.1.2009, disbursements on hotel accommodation are not included in the computation of gross income falling under section 4A of the ITA 1967 for the purposes of withholding tax. The purpose of this exemption is similar to that of reimbursement, i.e. is to reduce the cost of services provided by non-residents.

**Example 17**

Melamin Sdn Bhd engaged the engineering services of Scan Ltd (a Scandinavian company) for installation of a plant in its factory building. The services fees were agreed to be USD50,000. In addition, Melamin Sdn Bhd had to pay the hotel accommodation expenses for 2 engineers of Scan Ltd in Hilton Hotel. The services were performed in Malaysia from 10.1.2009 to 20.1.2009. The hotel bills incurred were RM5,000 and were paid on 21.1.2009. The amount due to Scan Ltd was settled on 29.1.2009 via telegraphic transfer.

As disbursements on hotel accommodation are not subject to withholding tax anymore, Melamin Sdn Bhd has to withhold tax of 10% on services fees only (USD50,000). Assuming that the exchange rate was USD1=RM3.10 on 29.1.2009, the amount withheld and actual payment due to Scan Ltd are as follows:

	RM
Services fee (USD50,000 @ 3.10)	155,000
Less:	
Withholding tax (10%)	<u>15,500</u>
Payment due to Scan Ltd	<u>139,500</u>

The amount of withholding tax RM15,500 should be remitted to the DGIR by 28.2.2009.

**12. Deposits And Advance Payments**

Non-refundable deposit and advance payment paid to the payee -

- (a) for services rendered, or
- (b) in respect of the use of any moveable property,

under section 4A of the ITA 1967 are subject to withholding tax under section 109B of the ITA 1967.

- (i) Advance payments

**Example 18**

Wise Solutions Pte Ltd, an American company, rendered technical service to Wawasan Sdn Bhd valued at RM1,000,000. The staff of Wise Solutions Pte Ltd performed the services in Malaysia. Wawasan Sdn Bhd is required to make an advance payment of 5% amounting to RM50,000 upon issuance of an interim invoice so that the service can commence.

The advance payment of RM50,000 is subject to withholding tax. Wawasan Sdn Bhd is responsible to withhold 10% of the advance payment and to remit the tax to the DGIR within one month from the date of crediting the payment to Wise Solutions Pte Ltd in accordance with section 109B of the ITA 1967. Even though the services are yet to be performed, the advance payment made is purely for the services which will be performed and forms part of the gross amount payable for the services.

- (ii) Non-refundable deposit

**Example 19**

Drillers Sdn Bhd had signed a technical service agreement with MP Pte Ltd of Netherlands, valued at RM1,000,000, whereby MP Pte Ltd will perform the services in Malaysia. According to the agreement, Drillers Sdn Bhd is required to pay a deposit of 10% which amounts to RM100,000 upon signing the agreement and the balance upon issuance of the invoice, which will be paid after the services are performed. Drillers Sdn Bhd paid the deposit to MP Pte Ltd accordingly.

The deposit of RM100,000 is subject to withholding tax. Drillers Sdn Bhd is responsible to withhold 10% of the deposit and to remit the tax to the DGIR within one month from the date of crediting the payment to MP Pte Ltd.

**13. Payments Which Are Not Subject To Withholding Tax**

13.1 Other payments to non-resident persons which are not subject to withholding tax are as follows:

- (a) Commission paid to a non-resident general commission agent for sales (for deals transacted overseas) made on behalf of the Malaysian company or individual,

### Example 20

Matrix Inc. a general commission agency, canvassed sales in Japan on behalf of a Malaysian company. The Malaysian company paid commission to the non-resident company (not related) based on the sales made.

Such payment of commission to a commission agent does not fall within the scope of charge under section 4(f) of the ITA 1967 and therefore is not subject to withholding tax.

- (b) Guarantee fees connected with any loan or indebtedness or commission for letters of credit,

### Example 21

Promissory Pte Ltd provides a guarantee to a loan taken from a bank in Singapore by a Malaysian company. In return for that guarantee the Malaysian company paid a sum of money as guarantee fees to Promissory Pte Ltd.

The payment of guarantee fees would not be subject to withholding tax as it does not fall within the scope of section 4A of the ITA 1967.

- (c) Deposit paid on the signing of an agreement for technical services which is refundable upon completion of the service, and

### Example 22

Projek Sdn Bhd signed a technical service agreement with Professional Pte Ltd, a German company, valued at RM1,000,000, whereby Professional Pte Ltd will perform the services in Malaysia. According to the agreement, Projek Sdn Bhd is required to pay a deposit of 10% which amounts to RM100,000 upon signing the agreement. The deposit will be refunded upon completion of the service and full payment of RM1,000,000 for the technical service provided.

The deposit is not subject to withholding tax as it is refundable. Refundable deposit does not form part of the gross amount payable for the technical service rendered.

- (d) Testing services for the provision of test results on finished products to meet required standards which do not involve technical advice or consultation.

### Example 23

JC Safety Products Sdn Bhd made payments to Inspec Ltd, a company based in Switzerland, in consideration for providing testing services. The testing services involved providing test results for the purposes of certification (accreditation) of JC's finished products.

The testing services on the finished products to meet the required standards (accreditation) do not fall within the scope of section 4A of the ITA 1967 as the testing services only involves the provision of test results and there is no technical advice or consultation provided to JC Safety Products Sdn Bhd.

#### 13.2 Income received from an approved MSC status company

To encourage the growth of information and communication technology (ICT) in Malaysia, the Government has offered a few incentives to companies involved in this field. One of the incentives is exemption from withholding tax on payments received by a non-resident company for providing technical advice or technical services to an approved MSC status company. The exemption is effective from 1.10.2002.

For the purpose of the exemption, an approved MSC status company means a company which:

- (a) has been awarded MSC status by the Multimedia Development Corporation (MDeC) by the Government of Malaysia, and
- (b) is engaged in the activities of regional IT solutions hub, regional internet exchange, regional data centre, regional internet data centre and regional call centre, and located in specific areas such as Cyberjaya, Technology Park Malaysia – Phase 1, University Putra Malaysia – Malaysia Technology Development Corporation Incubator 1 and Petronas Twin Towers [Income Tax (Exemption) (No. 13) Order 2005, P.U.(A) 102/2005].

#### 13.3 Income derived from providing training to Malaysians in specific expert areas, crafts and performing arts

Income received by a non-resident expert who trains Malaysians in performing arts and crafts is subject to withholding tax of 10% on the gross income. As an incentive to attract more foreign experts to train Malaysians to improve the quality of performing arts and craft production, the income of a non-resident expert who trains Malaysians in specific expert areas, crafts and performing arts is exempted from withholding tax. The exemption is effective for applications received and verified by the Ministry of Culture, Arts and Heritage from 1.10.2005 until 30.9.2010.

For the purpose of the exemption -

- (a) specific expert areas are areas related to music, choreography, cinematography, prop set, costume and stage technical,
- (b) crafts is any artistic product which is graced with cultural or traditional appeal and is the outcome of any process which is directly or indirectly, solely or partly based on manual skill or craftsmanship, and includes any batik product, and
- (c) performing arts includes stage performing in theatre, music and dance [Income Tax (Exemption) (No. 21) Order 2006, P.U.(A) 206/2006].

**13.4 Income of a non-resident individual who is an expert in Islamic finance**

The Government aspires to make Malaysia an International Islamic Financial Centre (MIFC). In order to achieve this aspiration, an incentive to attract leading global experts in Islamic finance to participate in MIFC was introduced. As an incentive, income received by the non-resident experts in Islamic finance (as verified by the MIFC Secretariat) which is classified as income under paragraph 4A(ii) of the ITA 1967 is exempted from withholding tax from 8.9.2007 until 31.12.2016 [Income Tax (Exemption) (No. 3) Order 2008, P.U.(A)114/2008].

**13.5 Income of a non-resident person for providing training approved by the Minister**

Technical fees paid to non-resident persons are subject to withholding tax of 10% on the gross income. To ensure a sufficient pool of skilled manpower and to strengthen the competitiveness of Malaysian professionals, the government has given tax incentives to non-resident persons who provide technical training to any employee of a resident person. Income received by non-resident persons is exempted from withholding tax from 30.8.2008 until 31.12.2012 if they provide technical training under the programme of:

- (a) post graduate course in information technology and communication, electronics or life sciences,
- (b) post basic course in nursing or allied healthcare, or
- (c) aircraft maintenance engineering course.

The courses mentioned above must be approved by the Minister of Finance [Income Tax (Exemption) (No. 3) Order 2009, P.U.(A) 262/2009].

14. Tax Rate

- 14.1 Income tax shall be charged for each year of assessment upon the income of the non-resident person charged under section 4A of the ITA 1967 which is derived from Malaysia, at the rate of 10% on the gross amount.

In the case where withholding tax on the payments made to non-resident persons are paid and borne by the payer, that payment is considered net of tax. In such situations, the payment that is received by the non-resident has to be regrossed to determine the amount of income on which income tax should be charged. The withholding tax should be computed on the regrossed income.

- (a) Withholding tax borne by payee

**Example 24**

New World Pte Ltd, a company based in South Korea, rendered technical service to Teknik Sdn Bhd, valued at RM150,000. The service was performed in Malaysia from 15.3.2012 to 24.3.2012. Upon completion of the service, New World Pte Ltd issued an invoice dated 28.3.2012 to Teknik Sdn Bhd for the services rendered. Teknik Sdn Bhd settled the technical service fees to New World Pte Ltd on 15.4.2012.

As the technical service falls within the scope of section 4A of the ITA 1967 and is subject to withholding tax under section 109B of the ITA 1967, Teknik Sdn Bhd should deduct the withholding tax as follows:

	RM
Technical service fee	150,000
Less:	
Withholding tax (10%)	<u>15,000</u>
Payment due to New World Pte Ltd	<u>135,000</u>

Teknik Sdn Bhd should remit the withholding tax deducted of RM15,000.00 to the DGIR within one month from the date of payment to New World Pte Ltd, which is by 14.5.2012. The amount of technical service fee that can be allowed in computing the adjusted income of Teknik Sdn Bhd for the year of assessment 2012 is RM150,000.

- (b) Withholding tax borne by payer

**Example 25**

The facts are the same as in Example 24 except that Teknik Sdn Bhd contracted to pay the full amount of the technical service fee of RM150,000 to New World Pte Ltd. Teknik Sdn Bhd also undertakes to bear and pay the withholding tax to the DGIR within the stipulated period. For the financial year ended 31.12.2012, Teknik Sdn Bhd can claim the whole amount of the expenses consisting of the technical service fee and the withholding tax in its profit and loss account.

	RM
Technical service fee paid to New World Pte Ltd	150,000
Add:	
Withholding tax paid to the DGIR	15,000
Amount claimed in the profit and loss account	<u>165,000</u>

Even though Teknik Sdn Bhd claims an amount of RM165,000 in its profit and loss account for year ended 31.12.2012, the DGIR can only allow an amount of RM150,000 pertaining to technical service fee in computing Teknik Sdn Bhd's adjusted income from any source for the year of assessment 2012. The withholding tax of RM15,000 borne by Teknik Sdn Bhd is not an allowable expense being not wholly and exclusively incurred in the production of gross income from that source.

- 14.2 However, where a DTA has been signed with a particular country, the preferential rate in the DTA would apply as explained in Example 6 of this Ruling. To be eligible for the preferential rate, a letter from the Revenue Authority of the relevant country confirming the resident status of the payee should be submitted.
- 14.3 This tax is a final tax. However, if a non-resident payee has income from other sources other than income under section 4A of the ITA 1967 for which he is required to file an Income Tax Return Form (M). The income under section 4A of the ITA 1967 may be included in the return, in which case this income will be subject to tax at the rate of 10% and a set-off under section 110 of the ITA 1967 will be given for the withholding tax paid in computing his tax payable for a year of assessment [paragraph 109B(3)(a) of the ITA 1967].

**15. Remittance Of Tax Deducted**

- 15.1 A payer, normally a person carrying on a business in Malaysia, is responsible for deducting and remitting the withholding tax payment under section 109B of the ITA 1967 to the DGIR and pay the recipient (a non-resident person) the net amount. The payer must within one month upon paying or crediting the

recipient pay the withholding tax so deducted to the DGIR. The payer is required to use Form C.P.37D and to fill in the following particulars:

- (a) Name, address and income tax reference number of the payer,
- (b) Full name, 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 the amount is paid or credited.

Form C.P.37D can be downloaded from LHDNM's website at <http://www.hasil.gov.my>.

**Example 26**

Bell Pte Ltd, tax resident in Hong Kong, rendered technical service to Ark Sdn Bhd in the year 2012, whereby Bell Pte Ltd performed the services in Malaysia. Bell Pte Ltd issued an invoice dated 2.2.2012 valued at RM1,000,000 for the services rendered. Ark Sdn Bhd settled the invoice on 31.3.2012.

In accordance with the provision of section 109B of the ITA 1967, Ark Sdn Bhd is required to deduct 10% withholding tax from the gross value of technical service fee of RM1,000,000 and remit to the Director General within one month from the date of crediting to Bell Pte Ltd that is on 31.3.2012. Therefore, the withholding tax payable in this case is RM100,000 and must be remitted to the DGIR by 30.4.2012. Payment of withholding tax must be remitted with the duly completed Form C.P.37D together with a copy of the invoice and payment remittance documents (such as bank slip, bank statement, telegraphic transfer, bank draft etc).

- 15.2 Payment must be submitted to the Collection Branch at the following locations according to the location of the branch handling the income tax file of the payer.

<b>STATE</b>	<b>ADDRESS</b>
Peninsular Malaysia	Lembaga Hasil Dalam Negeri Malaysia Cawangan Pungutan Tingkat 15, Blok 8A Kompleks Pejabat Kerajaan Jalan Duta, Karung Berkunci 11061 50990 Kuala Lumpur

STATE	ADDRESS
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 3, 6, 7, 8 & 15 Wisma Ting Pek Khing No.1 Jalan Padungan 93100 Kuching

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

- 15.3 In cases where the income tax reference number of the payee is not available when filling up the Form C.P.37D, the payer can leave this column blank. Immediate registration of the income tax reference number for the payee would be carried out by the Collection Branches upon receipt of Form C.P.37D. Where necessary, the payer may request for the income tax reference number of the payee from Cawangan Tidak Bermastautin (Non-Resident Branch) by writing in or sending through facsimile the application letters together with full details of the payee to:

Lembaga Hasil Dalam Negeri Malaysia  
Cawangan Tidak Bermastautin  
Tingkat 3, Blok 8, Kompleks Bangunan Kerajaan  
Jalan Duta, 50600 Kuala Lumpur  
Fax. Number : 03 - 6201 9745 / 6201 2417

- 15.4 Under special circumstances, depending on the merits of the case, the DGIR may allow extension of time for the tax deducted to be paid over.

## 16. Consequences Of Not Deducting And Remitting Tax

- 16.1 Where the payer fails to deduct and remit any amount of withholding tax due to the DGIR under subsection 109B(1) of the ITA 1967, that amount which he fails to pay shall be increased by 10% of the amount of withholding tax which he fails to pay and the total sum shall be a debt due from him to the Government and shall be payable to the DGIR [subsection 109B(2) of the ITA 1967].

**Example 27**

Golden Sdn Bhd fails to deduct and remit tax of RM5,000 due and payable on 30.9.2011, on a payment of RM50,000 chargeable to tax under section 4A, ITA 1967 to Bright Spark Ltd (a company based in Thailand). That sum which Golden Sdn Bhd fails to pay shall be increased by RM500 (10% of RM5,000). The total sum of RM5,500 (withholding tax of RM5,000 + increased amount of RM500) shall be a debt due to the Government.

- 16.2 Prior to 2.9.2006, the increased amount to be imposed on the person if he fails to deduct and remit any amount of withholding tax is equal to 10% of the payment liable to deduction of tax.

**Example 28**

Golden Sdn Bhd fails to deduct and remit tax of RM5,000 on a payment of RM50,000 which is subject to tax under section 4A of the ITA 1967 to Bright Spark Ltd due and payable on 1.6.2006. That sum which Golden Sdn Bhd failed to pay shall be increased by RM5,000 (10% of RM50,000) and the total sum of RM10,000 (withholding tax of RM5,000 + increased amount of RM5,000) shall be a debt due to the Government.

- 16.3 Where the payment in respect of section 4A income is subject to withholding tax under section 109B of the ITA 1967 and the payer fails to deduct and remit the tax to the DGIR in accordance with subsection 109B(1) of the ITA 1967, such payment will be disallowed as an expense in the computation of the adjusted income from any source of the payer [paragraph 39(1)(j) of the ITA]. However, if the payer subsequently pays the withholding tax together with the increased amount (as stated in paragraph 16.1), that payment under section 4A of the ITA 1967 made to the non-resident can be subsequently allowed as a deduction [proviso to paragraph 39(1)(j) of the ITA 1967].
- 16.4 With effect from 1.1.2011 for year of assessment 2011, in addition to the late payment penalty mentioned in paragraph 16.1 above, the DGIR is empowered to impose a penalty under subsection 113(2) of the ITA 1967 if -
- (a) the withholding tax deduction is made or paid after the due date for the furnishing of an ITRF for a year of assessment that relates to the payment of the section 4A income, and
  - (b) a deduction for expenses related to the such payment is made in the ITRF furnished or claimed in the information given to the DGIR in arriving at the adjusted income of the payer [proviso to paragraph 39(1)(j) of the ITA 1967].

In other words, under the self assessment system if a payer claims a deduction in the ITRF for expenses that are subject to withholding tax (where

the ITRF has been filed within the due date for submission for the relevant year of assessment) whereas the withholding tax has not been paid or remitted, the DGIR is empowered to impose a penalty under subsection 113(2) of the ITA 1967 for incorrect returns.

Similarly, if a payer makes a claim for expenses that are subject to withholding tax (ITRF has been filed after the due date for submission for the relevant year of assessment) whereas the withholding tax has not been paid or remitted, the DGIR is empowered to impose a penalty under subsection 113(2) of the ITA 1967 for incorrect information.

Although the expenses are incurred under subsection 33(1) of the ITA 1967, according to paragraph 39(1)(j) of the ITA 1967 a deduction is only allowable if the withholding tax is paid or remitted to the DGIR.

### Example 29

Powerplant Pte Ltd, a company resident in India, rendered technical service to Tokoh Sdn Bhd (accounting period is to 31 December annually) worth RM1,000,000, whereby Powerplant Pte Ltd had performed the services in Malaysia in January 2012. Tokoh Sdn Bhd made the payment of RM1,000,000 to Powerplant Pte Ltd on 30.8.2012 but did not comply with the withholding tax provisions pertaining to the above-mentioned services. ITRF for year of assessment 2012 is submitted to IRB on 1.7.2013 with a chargeable income of RM20,000 and the tax payable is RM5,000. Tokoh Sdn Bhd claimed a deduction for the technical fee.

During a tax audit in October 2013, the findings showed that Tokoh Sdn Bhd claimed a deduction in the ITRF filed although no withholding tax was deducted and remitted to the DGIR. IRB informed Tokoh Sdn Bhd to remit the withholding tax of RM100,000 (10% of RM1,000,000) but Tokoh Sdn Bhd failed to do so.

The total technical fee expenses of RM1,000,000 will be disallowed as a deduction for tax purposes for the relevant year of assessment pursuant to paragraph 39(1)(j) of the ITA 1967. An additional assessment is issued on 30.10.2013 and a penalty under subsection 113(2) of the ITA 1967 is imposed for incorrect returns.

Year Of Assessment 2012	RM
<b>Deemed Assessment</b>	
Tax payable (RM20,000 x 25%)	5,000
<b>Additional Assessment (after audit by IRB)</b>	
Chargeable income	20,000
Add:	
Technical fee	<u>1,000,000</u>
Adjusted chargeable income	<u>1,020,000</u>
Tax charged (RM1,020,000 X 25%)	255,000
Less:	
Original tax payable	<u>5,000</u>
Tax undercharged	250,000
Penalty under subsection 113(2) of the ITA 1967 (100% of underdeclared tax)	<u>250,000</u>
Additional tax payable	<u>500,000</u>

The withholding tax amounting to RM100,000 which Tokoh Sdn Bhd failed to pay shall be increased by RM10,000 (10% of RM100,000) under subsection 109B(2) of the ITA 1967. The total sum of RM110,000 (withholding tax of RM100,000 + increased amount of RM10,000) shall be a debt due to the Government. Legal action may be taken by the DGIR pursuant to subsection 106(1) of the ITA 1967 to recover the amount of withholding tax and increase of tax due.

If the withholding tax and penalty (subsection 109B(2) of the ITA 1967) is subsequently paid, the penalty under subsection 113(2) of the ITA 1967 will be maintained as an incorrect return was filed on 1.7.2013.

### **Example 30**

The facts are the same as in Example 29 except that Tokoh Sdn Bhd paid the withholding tax and penalty of RM110,000 (withholding tax of RM100,000 + increased amount of RM10,000) on 30.11.2013 after receiving the additional assessment.

The additional assessment dated 30.10.2013 will be amended by issuing a reduced assessment. However, Tokoh Sdn Bhd will still be penalised under subsection 113(2) of the ITA 1967 for filing an incorrect return for year of assessment 2012 [subsection 39(1)(j) of the ITA 1967].

Year Of Assessment 2012	RM
<b>Additional Assessment (after audit by IRB)</b>	
Additional tax	250,000
Penalty under subsection 113(2) of the ITA 1967 (100% of underdeclared tax)	<u>250,000</u>
Additional tax payable	<u>500,000</u>
<b>Reduced Assessment (after withholding tax paid on 30.11.2013)</b>	
Adjusted chargeable income	1,020,000
Less:	
Technical fee paid	<u>1,000,000</u>
	<u>20,000</u>
Tax charged (RM20,000 X 25%)	5,000
Penalty under subsection 113(2) of the ITA 1967 (revised)	<u>5,000</u>
Tax payable	10,000
Less:	
Tax payable on 30.10.2013	<u>505,000</u>
Tax discharged	<u>495,000</u>

### **Example 31**

The facts are the same as in Example 29 except that in the agreement between Tokoh Sdn Bhd and Powerplant Pte Ltd, there was a clause stating that Tokoh Sdn Bhd would be charged late payment interest of 5% on any unpaid amount if it fails to make the payment due to Powerplant Pte Ltd by 30.8.2012. Tokoh Sdn Bhd paid Powerplant Pte Ltd RM1,050,000 (amount due of RM1,000,000 + 5% late payment interest of RM50,000) on 30.12.2012. Tokoh Sdn Bhd did not deduct and remit the withholding tax due and payable.

The total technical service expenses of RM1,000,000 will be disallowed as a deduction for tax purposes for the relevant year of assessment pursuant to paragraph 39(1)(j) of the ITA 1967. The 5% late interest payment of RM50,000 payable to Powerplant Pte Ltd by Tokoh Sdn Bhd is not an allowable deduction under paragraph 39(1)(b) of the ITA 1967.

An additional assessment is issued and a penalty under subsection 113(2) of the ITA 1967 is imposed as shown in Example 28.

The withholding tax is 10% of the gross technical fee of RM1,000,000. No withholding tax is imposed on the 5% late payment interest of RM50,000. The withholding tax amounting to RM100,000 which Tokoh Sdn Bhd failed to pay shall be increased by RM10,000 (10% of RM100,000). The total sum of RM110,000 (withholding tax of RM100,000 + increased amount of RM10,000) shall be a debt due to the Government.

16.5 With effect from 1.1.2012, pursuant to subsection 39(3) of the ITA 1967, where a payer enjoys full tax exemption on his income from all sources for the basis period for a year of assessment under –

- (a) the Promotion of Investments Act 1986,
- (b) paragraph 127(3)(b) of the ITA 1967, or
- (c) subsection 127(3A) of the ITA 1967

and fails to remit withholding tax on the expenditure incurred and payable to a non-resident in respect of –

- (i) interest or royalties under section 109 of the ITA 1967,
- (ii) contract payments under section 107A of the ITA 1967, or
- (iii) any payments under sections 109B or 109F of the ITA 1967

the deductions disallowed under paragraphs 39(1)(f), 39(1)(i) or 39(1)(j) of the ITA 1967 are not applicable to that payer.

However, deductions disallowed under paragraphs 39(1)(f), 39(1)(i) or 39(1)(j) of the ITA 1967 are still applicable to the payers who enjoy tax exemption on income equal to capital expenditure incurred or payers who have no chargeable income (incurred loss).

### Example 32

Co. A made an application for a tax exemption on income under subsection 127(3A) of the ITA 1967 to the Minister of Finance. A tax exemption on the statutory income of the company was approved by the Minister of Finance under subsection 127(3A) of the ITA 1967 in 2012 for a period of 5 years with effect from year of assessment 2012. Co. A paid technical service fees amounting to RM50,000 to Co. B in Indonesia on 30.6.2012 without deducting and remitting any withholding tax payment. Co. A claimed deductions for the technical service fees in the profit and loss account for the year ended 31.12.2012.

**Computation Of Exempt Income  
Year of Assessment 2012**

Details	Tax Treatment With Effect From 1.1.2012 RM	Tax Treatment Prior To 1.1.2012 (For Comparison Purpose only) RM
Adjusted income (after audit)	500,000	500,000
Add:		
Technical service fees [paragraph 39(1)(j)]	Nil	50,000
Adjusted income	<u>500,000</u>	<u>550,000</u>
Less:		
Capital allowance	<u>100,000</u>	<u>100,000</u>
Statutory income	<u>400,000</u>	<u>450,000</u>
Exempt income	400,000	450,000
Amount credited to the Exempt Account	400,000	450,000

For the year of assessment 2012, Co. A enjoyed full tax exemption under subsection 127(3A) of the ITA 1967 and had failed to remit the withholding tax under section 109B of the ITA 1967. Therefore, pursuant to subsection 39(3) of the ITA 1967, the technical service fees of RM50,000 paid to Co. B in Indonesia would not be added back in the tax computation.

It is to be noted that the withholding tax amounting to RM5,000 which Co. A failed to pay will be increased by RM500 (10% of RM5,000) under subsection 109B(2) of the ITA 1967. The total sum of RM5,500 (withholding tax of RM5,000 + increased amount of RM500) shall be a debt due to the Government. Legal action shall be taken by the DGIR pursuant to subsection 106(1) of the ITA 1967 to recover the amount of withholding tax and increase of tax due.

**Example 33**

Co. X, a high technology company was granted investment tax allowance (ITA) under the Promotion of Investments Act 1986 on 30.11.2012 for 5 years (as determined by the Malaysian Industrial Development Authority). Co. X commenced operations on 1.2.2012 and its financial year end is 31 December.

Co. X paid technical fees of RM200,000 to Co. Y in the United Kingdom on 1.6.2012 without remitting withholding tax. Co. X is eligible to claim ITA amounting to RM6,000,000 (60% of RM10,000,000 incurred on qualifying capital expenditure) for the year of assessment 2012. Co. X was granted a tax exemption of 100% of its statutory income.

**Computation Of Exempt Income  
Year of Assessment 2012**

Details	Tax Treatment With Effect From 1.1.2012 RM
Adjusted income (after audit)	350,000
Add:	
Technical service fees [paragraph 39(1)(j)]	Nil
Adjusted income	350,000
Less:	
Capital allowance	<u>100,000</u>
Statutory income	250,000
Less:	
ITA (against 100% of statutory income)	
Total income / Chargeable income	<u>250,000</u>
	Nil
ITA                    6,000,000	
ITA absorbed	
in current year <u>250,000</u>	
Unabsorbed	
ITA c/f <u>5,750,000</u>	
Exempt income	250,000
Amount credited to the Exempt Account	250,000

Co. X was granted ITA and failed to remit the withholding tax of RM20,000 (10% of RM200,000) for the year of assessment 2012. Since the ITA granted was full exemption on its statutory income, the payment of RM200,000 in respect of technical fees paid to Co. Y in the United Kingdom would not be added back in the tax computation (subsection 39(3) of the ITA 1967).

**Example 34**

Co. M was granted investment tax allowance (ITA) under the Promotion of Investments Act 1986 on 30.11.2012 for 5 years (as determined by the Malaysian Industrial Development Authority). Co. M commenced operations on 1.2.2012 and its financial year end is 31 December.

Co. M paid technical fees of RM200,000 to Co. F in the United Kingdom on 1.6.2012 without remitting withholding tax. Co. M is eligible to claim ITA amounting to RM6,000,000 (60% of RM10,000,000 incurred on qualifying capital expenditure) for the year of assessment 2012. The ITA is restricted to 70% of the statutory income of Co. M.

**Computation Of Exempt Income**

**Year of Assessment 2012**

Details	Tax Treatment With Effect From 1.1.2012 RM
Adjusted income (after audit)	350,000
Add:	
Technical service fees [paragraph 39(1)(j)]	200,000
Adjusted income	<u>550,000</u>
Less:	
Capital allowance	<u>100,000</u>
Statutory income	450,000
Less:	
ITA (restricted to 70% of statutory income)	<u>315,000</u>
Total income / Chargeable income	<u>135,000</u>
Tax payable (RM135,000 @ 25%)	<u>31,250</u>
ITA                    6,000,000	
ITA absorbed in current year    315,000	
Unabsorbed	<u>          </u>
ITA c/f                5,685,000	
Exempt income	315,000
Amount credited to the Exempt Account	315,000

Co. M was granted ITA and failed to remit the withholding tax of RM20,000 (10% of RM200,000) for the year of assessment 2012. Since the ITA granted was not full exemption on its statutory income, the payment of RM200,000 in respect of technical fees paid to Co. F in the United Kingdom is disallowed under paragraph 39(1)(j) of the ITA 1967 (subsection 39(3) of the ITA 1967).

**Example 35**

The facts are the same as in Example 34 except that Co. M suffered an adjusted loss for the year of assessment 2012.

**Computation Of Exempt Income  
Year of Assessment 2012**

Details	Tax Treatment With Effect From 1.1.2012 RM
Adjusted loss(after audit)	(350,000)
Add:	
Technical service fees [paragraph 39(1)(j)]	200,000
Adjusted loss (c/f)	(150,000)
Current year capital allowance 100,000 (c/f)	_____
Statutory income	Nil
Less:	
ITA (restricted to 70% of statutory income)	_____ Nil
Total income / Chargeable income	_____ Nil
ITA                    6,000,000	
ITA absorbed in current year        Nil	
Unabsorbed ITA c/f                    6,000,000	
Exempt income	Nil
Amount credited to the Exempt Account	Nil

Since Co. M has no chargeable income (incurred loss) for year of assessment 2012, the payment of RM200,000 in respect of technical

fees paid to Co. F in the United Kingdom is disallowed under paragraph 39(1)(j) of the ITA 1967 (subsection 39(3) of the ITA 1967).

16.6 Where the payer when making payments to the non-resident person has not deducted withholding tax but undertook to pay the withholding tax himself to the DGIR, the payer may recover that amount of the withholding tax from that non-resident person [paragraph 109B(3)(b) of the ITA 1967].

#### 17. Appeal By Payer On Payment Of Withholding Tax

Effective 1.1.2013 a payer who is liable to make payment of withholding tax under section 109B of the ITA 1967 may appeal to the Special Commissioners if the basis is that the withholding tax payment is not liable to be paid under the ITA 1967. The appeal has to be made within 30 days from the date the amount is due to be made to the DGIR.

However, an appeal cannot be made by the payer under the following circumstances:

- (a) the non-resident person has filed an appeal to the Special Commissioners in relation to the payment under section 4A of the ITA 1967 to which the withholding tax relates,
- (b) the payment under section 4A of the ITA 1967 to the non-resident has been disallowed as a deduction under section 39(1) of the ITA 1967 in arriving at the adjusted income of the payer, or
- (c) the withholding tax due has not been paid to the DGIR by the payer.  
[section 109H of the ITA 1967]

#### 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 in Malaysia, the period will include the next working day. In other words, if the due date for payment of withholding tax falls on a weekly holiday (eg. Saturday and Sunday in Kuala Lumpur or Friday and Saturday in Terengganu) or a public holiday in Malaysia, the following working day would be considered as the due date for payment.

**Example 36**

Maxwell Malaysia Bhd in Kuala Lumpur paid technical fees of RM150,000 to Sconil Co. Ltd on 28.2.2013 for services performed in Malaysia. Maxwell Malaysia Bhd has to remit withholding tax deducted of RM15,000 to the DGIR within one month from the date technical fees was paid to Sconil Co. Ltd, which is 30.3.2013 (Saturday).

As the due date for payment (30.3.2013) falls on a Saturday, a weekly holiday in Kuala Lumpur, the next working day, Monday (1.4.2013) is therefore the due date for payment.

**20. Glossary**

- 20.1 “Crediting” in relation to an amount 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.
- 20.2 “Crediting in a contra situation” means a situation in which the amount is made available to offset any amount owing by the non-resident payee in the company’s records.
- 20.3 “Resident person” is a person resident in Malaysia for the basis year for a year of assessment as determined under sections 7 and 8.
- 20.4 “Non-resident person” in relation to the payee, is a person other than a resident person.
- 20.5 “Date of crediting” refers to the date the amount is paid or the date the amount is credited in the bank account of the recipient or the date of a contra entry.

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