



**LEMBAGA HASIL DALAM NEGERI  
INLAND REVENUE BOARD**

**PUBLIC RULING**

**WITHHOLDING TAX ON SPECIAL  
CLASSES OF INCOME**

*Translation from the original Bahasa Malaysia text.*

**PUBLIC RULING NO. 4/2005**

**DATE OF ISSUE: 12 SEPTEMBER 2005**

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**DIRECTOR GENERAL'S PUBLIC RULING**

A Public Ruling is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board. 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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,  
Malaysia**



## WITHHOLDING TAX ON SPECIAL CLASSES OF INCOME

**LEMBAGA HASIL DALAM NEGERI  
MALAYSIA**

**Public Ruling No. 4/2005  
Date of Issue: 12 September 2005**

1. This Ruling explains:
  - (a) the special classes of income that are chargeable to tax under section 4A of the Income Tax Act, 1967 (ITA);
  - (b) the deduction of tax from these special classes of income; and
  - (c) the consequences of not deducting and remitting tax deducted from these special classes of income.
2. The related provisions are section 4A, paragraph 6(1)(e), section 15A, subsection 24(8), paragraph 39(1)(j), section 109B and Part V of Schedule 1 of the ITA.
3. The words used in this Ruling have the following meanings:
  - 3.1 "Director General" means the Director General of Inland Revenue.
  - 3.2 "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.
  - 3.3 "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.
  - 3.4 "Person" in relation to the payer, includes a company, a co-operative society, a club, an association, a Hindu joint family, a trust, an estate under administration, an individual and a partnership.
  - 3.5 "Resident person" is a person resident in Malaysia for the basis year for a year of assessment as determined under section 7, section 8 and subsection 61(3) of the ITA.
  - 3.6 "Non-resident person" in relation to the payee, is a person other than a resident person.
  - 3.7 "Disbursements or out-of-pocket expenses" refer to any incidental expenses incurred in relation to services rendered or in relation to the use of any moveable property under section 4A of the ITA.
  - 3.8 "Reimbursements" refer to disbursements or out-of-pocket expenses incurred by the non-resident payee in relation to the services rendered or in relation to the use of any moveable property under section 4A of the ITA and subsequently reimbursed by the payer.

3.9 "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.

#### **4. Special classes of income chargeable to tax**

4.1 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;
- (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, project or scheme - paragraph 4A(ii) of the ITA; 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.

#### **5. Derivation of special classes of income**

5.1 The gross income in respect of the amounts paid under paragraphs 4A(i), 4A(ii) and 4A(iii) of the ITA shall be deemed to be derived from Malaysia if:

- (a) the responsibility for the payment lies with the Government or a State Government;
- (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.

5.2 Income under paragraphs 4A(i) and 4A(ii) of the ITA are deemed derived from Malaysia if such services are performed in Malaysia.

5.3 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



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.*

**(ii) 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. Therefore, withholding tax at the rate of 10% on the gross amount should be deducted.*

**7. Technical advice, assistance or services rendered in connection with technical management or administration - paragraph 4A(ii) of the ITA**

- 7.1 Paragraph 4A(ii) of the ITA 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.
- 7.2 The scope of payments made to a non-resident person under paragraph 4A(ii) of the ITA 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.
- 7.3 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.
- 7.4 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:

- by a non-resident head office to the Malaysian branch; or
- 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 and therefore are not subject to withholding tax under section 109B of the ITA.*

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

(i) **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:

- the supervision and control of the general manager;
- the supervision and co-ordination of staff training and development programmes; and
- 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.



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

(ii) **Consultancy service**

**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. 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 Double Taxation Agreement between Malaysia and United Kingdom.*

**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% on the gross amount as the services were wholly performed in Malaysia.*

**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, local accommodation, food and other related expenses.

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

**(iii) 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.*

**(iv) 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.*

**(v) 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.*

**8. Rent or other payments for use of moveable property - paragraph 4A(iii) of the ITA**

8.1 Paragraph 4A(iii) of the ITA consists of rents or other payments made for the use of any moveable property belonging to the non-resident person which include rents or other payments made for the use of oil rigs, boats, ships, cars, aircraft or other equipment. However, the following income does not fall within the scope of paragraph 4A(iii) of the ITA or is exempted -

**(i) 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 as freight charges are fees for the shipment of goods and not payments for the use of a moveable property; and

**(ii) Pooling arrangements**

A non-resident deriving income under paragraph 4A(iii) of the ITA 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 withholding tax under the Income Tax (Exemption) (No.25) Order 1995 P.U. (A) 322/1995.

8.2 The following are activities falling within the scope of paragraph 4A (iii) of the ITA:

**(i) 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.

**(ii) Leasing of ships**

Where a ship is chartered, whether bare boat or with crew, the exclusive use of the ship means that the payments made to the non-resident owner of the ship fall within the ambit of paragraph 4A(iii) of the ITA and are subject to a withholding tax at 10% on the gross receipt.

**(iii) 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.

(iv) **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. Reimbursements**

9.1 Reimbursements refer to disbursements or out-of-pocket expenses incurred by the payee -

- in the course of rendering services to the payer; or
- 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.

9.2 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 and is subject to withholding tax at the rate of 10% on the gross amount under section 109B of the ITA.

**Example 12**

KJ Pte Ltd, an Australian company, rendered technical service to Pillarworks Sdn Bhd. The services were performed in Malaysia. KJ Pte Ltd issued an invoice 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. Thus, Pillarworks Sdn Bhd is responsible to withhold 10% of the gross fee of RM15,000 (RM1,500.00) and remit to the Director General within one month from the date of crediting the net technical service fee of RM13,500 to KJ Pte Ltd.*

**10. Disbursements or out-of-pocket expenses**

10.1 Disbursements or out-of-pocket expenses are expenses incurred by the payer and paid to a third party on behalf of the payee -

- in connection with services rendered by the payee; or
- in respect of the use of any moveable property,



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under section 4A of the ITA. 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 and is subject to withholding tax at the rate of 10% on the gross amount under section 109B of the ITA.

### **Example 13**

SH Pte Ltd, a Singapore company, rendered technical service to Roadworks Sdn Bhd. The services were performed in Malaysia. SH Pte Ltd issued an invoice 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. 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 Director General 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.*

### **Example 14**

Scanoil Co Ltd, a Swedish company, rendered technical service to Malwell Malaysia Bhd. The service was performed in Malaysia from 15 March 2005 to 24 March 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 March 2005. Upon completion of the service, Scanoil Co Ltd issued an invoice dated 28 March 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 April 2005 via telegraphic transfer.

*As the technical service falls within the scope of section 4A of the ITA and is subject to withholding tax under section 109B of the ITA, Malwell Malaysia*



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*Bhd should remit the withholding tax deducted of RM15,000.00 to the Director General within one month from the date of payment to Scanoil Co Ltd., which is by 14 May 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. Thus, Malwell Malaysia Bhd should remit the withholding tax applicable to the hotel accommodation expenses of RM200.00 to the Director General within one month from the date of payment to Hotel Seri Malaysia, which is by 23 April 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 below:*

	RM
<i>Technical service fee</i>	150,000.00
<i>Hotel accommodation expenses</i>	<u>2,000.00</u>
<b><i>Total amount subject to withholding tax</i></b>	152,000.00
<i>Less: Withholding tax (10%)</i>	<u>15,200.00</u>
<i>Net payment due</i>	136,800.00
<i>Less: Payment made to Hotel Seri Malaysia</i>	<u>2,000.00</u>
<b><i>Payment due to Scanoil Co Ltd</i></b>	<u><u>134,800.00</u></u>

	RM
<i>Withholding tax payable on 23 April 2005</i>	200.00
<i>Withholding tax payable on 14 May 2005</i>	<u>15,000.00</u>
<b><i>Total withholding tax payable to the Director General</i></b>	<u><u>15,200.00</u></u>

### 11. Deposit and advance payment

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

- for services rendered; or
- in respect of the use of any moveable property, under section 4A of the ITA are subject to withholding tax under section 109B of the ITA.

(i) **Example 15**

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 Director General within one month from the date of crediting the payment to Wise Solutions Pte Ltd in accordance with section 109B of the ITA. 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) **Example 16**

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 Director General within one month from the date of crediting the payment to MP Pte Ltd.*

## **12. Payments which are not subject to withholding tax**

12.1 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;
- (b) guarantee fees connected with any loan or indebtedness or commission for letters of credit;
- (c) deposit paid on the signing of an agreement for technical services which is refundable upon completion of the service; and

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

(i) **Example 17**

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 and therefore is not subject to withholding tax.*

(ii) **Example 18**

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.*

(iii) **Example 19**

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.*

(iv) **Example 20**

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*



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*the ITA 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. Tax rate

13.1 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 which is derived from Malaysia, at the rate of 10% on the gross amount.

#### **Example 21**

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 March 2005 to 24 March 2005. Upon completion of the service, New World Pte Ltd issued an invoice dated 28 March 2005 to Teknik Sdn Bhd for the services rendered. Teknik Sdn Bhd settled the technical service fees to New World Pte Ltd on 15 April 2005.

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

	RM
Technical service fee	150,000.00
Less:	
Withholding tax (10%)	<u>15,000.00</u>
Payment due to New World Pte Ltd	<u>135,000.00</u>

*Teknik Sdn Bhd should remit the withholding tax deducted of RM15,000.00 to the Director General within one month from the date of payment to New World Pte Ltd, which is by 14 May 2005. The amount of technical service fee that can be allowed in computing the adjusted income of Teknik Sdn Bhd for the year of assessment 2005 is RM150,000.*

#### **Example 22**

By using the facts in Example 21, 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 Director General within the stipulated period. For the financial year ended 31.12.2005, Teknik Sdn Bhd claimed 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	150,000.00



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Add:	
Withholding tax paid to the Director General	15,000.00
Amount claimed in the profit and loss account	<u>165,000.00</u>

*Even though Teknik Sdn Bhd had claimed an amount of RM165,000.00 in its profit and loss account for year ended 31.12.2005, the Director General can only allow an amount of RM150,000.00 pertaining to technical service fee in computing Teknik Sdn Bhd's adjusted income from any source for the year of assessment 2005. The withholding tax of RM15,000.00 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 (Esso Production Malaysia Inc. v. Ketua Pengarah Hasil Dalam Negeri - Judgement delivered on 20 March 2003).*

- 13.2 However, where a Double Taxation Agreement (DTA) has been signed with a particular country, the preferential rate in the DTA would apply as explained in Example 6 of this Public 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.
- 13.3 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 for which he is required to file tax return - Form M, the income from section 4A of the ITA 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 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.

### 14. Remittance of tax deducted

- 14.1 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 to the Director General 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 Director General. 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.



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Form C.P.37D can be downloaded from LHDN's website at <http://www.hasilnet.org.my>.

- 14.2 Form C.P.37D together with the payment must be submitted to the Collection Branch at the following locations where applicable, according to the location of the income tax file of the payer.

Peninsular Malaysia	Lembaga Hasil Dalam Negeri Malaysia Cawangan Pungutan Tingkat 15, Blok 8A Kompleks Pejabat Kerajaan Jalan Duta, Karung Berkunci 11061 <b>50990 Kuala Lumpur</b>
Sabah & WP Labuan	Lembaga Hasil Dalam Negeri Malaysia Unit Pungutan, Tingkat Bawah Wisma Bandaraya Jalan Masjid Lama <b>88600 Kota Kinabalu</b>
Sarawak	Lembaga Hasil Dalam Negeri Malaysia Unit Pungutan Aras 3,6,7,8 & 15 Wisma Ting Pek Khing No.1 Jalan Padungan <b>93100 Kuching</b>

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

- 14.3 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 10, Blok 11, Kompleks Bangunan Kerajaan  
Jalan Duta, 50600 Kuala Lumpur  
Fax. Number : 03 - 6201 9745 / 6201 2417

### **Example 23**

Bell Pte Ltd, tax resident in Hong Kong, rendered technical service to Ark Sdn Bhd in the year 2005, whereby Bell Pte Ltd performed the services in Malaysia. Bell Pte Ltd issued an invoice dated 2 February 2005 valued at RM1,000,000 for the services rendered. Ark Sdn Bhd settled the invoice on 31 March 2005.

*In accordance with the provision of section 109B of the ITA, 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 March 2005. Therefore, the withholding tax payable in this case is RM100,000 and must be remitted to the Director General by 30 April 2005. 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.).*

14.4 Under special circumstances, depending on the merits of the case, the Director General may allow extension of time for the tax deducted to be paid over.

## **15. Consequences of not deducting and remitting tax**

15.1 Where the payer fails to deduct and remit any amount of withholding tax due to the Director General under subsection 109B(1) of the ITA, that amount which he fails to pay shall be increased by 10% of the payment liable to deduction of tax and the total sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General - subsection 109B(2) of the ITA.

### **Example 24**

*If 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 to Bright Spark Ltd (a company based in Thailand), 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.*

15.2 Where the payment in respect of section 4A income is subject to withholding tax under section 109B of the ITA and the payer fails to deduct and remit the tax to the Director General in accordance with subsection 109B(1) of the ITA, 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 15.1), that payment under section 4A of the ITA made to the non-resident can be



## WITHHOLDING TAX ON SPECIAL CLASSES OF INCOME

LEMBAGA HASIL DALAM NEGERI  
MALAYSIA

Public Ruling No. 4/2005  
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subsequently allowed as a deduction - (proviso to paragraph 39(1)(j) of the ITA).

### **Example 25**

Powerplant Pte Ltd, a company resident in India, rendered technical service to Tokoh Sdn Bhd worth RM1,000,000, whereby Powerplant Pte Ltd had performed the services in Malaysia. Tokoh Sdn Bhd did not comply with the withholding tax provisions pertaining to the above-mentioned services. During a tax audit, the tax authorities informed Tokoh Sdn Bhd to remit the withholding tax, but Tokoh Sdn Bhd failed to do so.

*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 and legal action may be taken by the Director General pursuant to subsection 106(1) of the ITA to recover the amount of withholding tax due.*

- 15.3 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 Director General, the payer may recover that amount of the withholding tax from that non-resident person - (paragraph 109B(3)(b) of the ITA).
16. The Director General reserves the right to examine the position of a transaction more closely where circumstances so require.
17. This Public Ruling is effective from the date of issue.

**Director General  
of Inland Revenue**