



INLAND REVENUE BOARD OF MALAYSIA

**WITHHOLDING TAX
ON INCOME OF A NON-RESIDENT
PUBLIC ENTERTAINER**

PUBLIC RULING NO. 6/2017

Translation from the original Bahasa Malaysia text

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Inland Revenue Board of Malaysia

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DIRECTOR GENERAL'S PUBLIC RULING

Section 138A of the Income Tax Act 1967 [ITA] provides that the Director General is empowered to make a Public Ruling in relation to the application of any provisions of the ITA.

A Public Ruling is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It sets out the interpretation of the Director General in respect of the particular tax law and the policy as well as the procedure applicable to it.

The Director General may withdraw this Public Ruling either wholly or in part, by notice of withdrawal or by publication of a new Public Ruling.

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

1. Objective

The objective of this Public Ruling (PR) is to explain the –

- (a) income received by a non-resident public entertainer in Malaysia;
- (b) deduction of tax from income received by a non-resident public entertainer; and
- (c) consequence of not remitting tax deducted from income received by a non-resident public entertainer.

2. Relevant Provisions of the Law

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The provisions of the Income Tax Act 1967 (ITA) related to this PR are sections 2, 6, 7, 109A, subsection 113(2), paragraph 39(1)(q), Part II of Schedule 1, paragraphs 21 and 22 of Schedule 6.

2.3 Relevant subsidiary laws referred to in this PR are –

- (a) Income Tax (Exemption) (No. 23) Order 1990 [P.U.(A) 428/1990];
- (b) Income Tax (Exemption) (No. 17) Order 1999 [P.U.(A) 321/1999]; and
- (c) Income Tax (Exemption) (No. 54) Order 2000 [P.U.(A) 501/2000].

3. Interpretation

The words used in this PR have the following meaning:

3.1 “Non-resident” means other than a resident of Malaysia.

3.2 “Individual” means a natural person.

3.3 “Person” includes a company, a body of persons, a limited liability partnership and a corporation sole.

3.4 “Resident” means resident in Malaysia for the basis year for a year of assessment by virtue of section 7 of the ITA.

3.5 “Public entertainer” includes –

- (a) a compere, model, circus performer, lecturer, speaker, sportsperson, an artiste or an individual exercising any profession, vocation or employment of a similar nature; or
- (b) an individual who uses his intellectual, artistic, musical, personal or physical skill or character in,

carrying out any activity in connection with any purpose through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast, as the case may be.

4. Services Performed or Rendered in Malaysia by a Non-Resident Public Entertainer

Pursuant to section 109A of the ITA, the provisions of sections 109 and 110 of the ITA are applicable to remuneration or other income in respect of services performed or rendered in Malaysia by a non-resident public entertainer.

5. Non-Resident Public Entertainer

5.1 Meaning of non-resident public entertainer

A public entertainer has been defined in the ITA. A non-resident individual is considered a public entertainer in Malaysia if his activity falls within the definition of a public entertainer. In order to ascertain whether a non-resident individual can be classified as a public entertainer, the activity of the individual and the nature of his activity has to be examined.

A non-resident public entertainer means a non-resident individual, who carries out the following activities:

- (a) a solo or group performance as an actor, model, circus performer, compere, dancer, entertainer, musician, singer, other artiste, or the exercise of any profession, vocation or employment of a similar nature for cultural, educational, entertainment, religious or any other purposes;
- (b) the use of the non-resident individual's intellectual, artistic, musical, personal or physical skill or character for cultural, educational, entertainment, religious or any other purposes;
- (c) lecture, speech, or talk for any purpose; or
- (d) a sporting event or sporting competition of any nature.

5.2 Medium of public entertainment

The medium of public entertainment for a non-resident public entertainer to carry out any activity in connection with any purpose could be through live, print, electronic, satellite, cable, fibre optic or other medium, for film or tape, or for television or radio broadcast. Other medium includes any other transmission medium that is used.

5.3 A non-resident who is not a public entertainer

An individual who works behind the scenes in an arts-related activity such as cinematographers, directors, producers, choreographers and technical personnel do not qualify as public entertainers. A person who works behind the scenes in a sports-related activity such as horse trainers, coaches and personal trainers do not fall within the definition of public entertainers.

6. **Residence Status**

Generally, a public entertainer will be treated as a non-resident if he is in Malaysia for less than 182 days in a calendar year.

The resident status of an individual for a basis year for a year of assessment is determined by reference to the physical presence of that individual in Malaysia and not by his nationality or citizenship. In certain situations, the physical presence for the basis years preceding and following a particular year of assessment has to be taken into consideration in determining the residence status of an individual [section 7 of the ITA].

Further information may be obtained from the PR No. 6/2011 dated 16.5.2011 entitled "Residence Status of Individuals" from Inland Revenue Board of Malaysia (IRBM) official portal at www.hasil.gov.my.

7. **Withholding Tax on Payments to a Non-Resident Public Entertainer**

A non-resident public entertainer is liable to tax on the remuneration or other income in respect of services performed or rendered in Malaysia. A non-resident public entertainer performing or rendering services in Malaysia can be exercising a profession, vocation or employment.

7.1 A public entertainer is likely to be self-employed and he is taxed on his earnings as a person carrying on a trade, profession or vocation. However, there are circumstances where a public entertainer is considered as an employee. For example, in the case of team sports (eg. football), the player would likely be an employee of a club or league for which he will play and receive a basic salary.

Example 1

A legendary cellist from Russia arrived in Malaysia to perform at the Petronas Philharmonic hall for 2 nights in January 2017 and was paid a fee of RM1 million by the organiser in Malaysia. A popular compere from the United States of America (USA) was also engaged for the 2 nights event and was paid RM300,000.

The Russian cellist would be considered a public entertainer as he used his musical skill for a live public performance. The compere is also a public

entertainer. The fees paid to both the cellist and compere are subject to withholding tax as provided in section 109A of the ITA.

Example 2

A leading bank in Malaysia sponsored an acclaimed musical masterpiece at Istana Budaya in early 2017. A sum of RM1 million was paid for the performance by a group of touring theatrical performers from the United Kingdom. In the contracts between all the relevant parties, it was clearly stated that for administrative purposes, a management company in Malaysia was appointed by the group of theatrical performers merely to act as their agent during the musical tour in Malaysia. The duties of the agent include receiving payment on behalf of the group of theatrical performers but the agent has no right to use and enjoy the sum received. The theatrical performers are the actual recipients of the payment.

The theatrical performers would be considered public entertainers as they had used their artistic and musical skills for a live public performance. The payment of RM1 million is subject to withholding tax as provided in section 109A of the ITA.

Example 3

A professional cyclist and a resident of France is employed by a French cycling team, an entity established in France as a corporation. The cyclist and his team arrived in Malaysia on 1.4.2017 to participate in a competition organised and sponsored by a company dealing in sports equipment in Malaysia. According to an agreement between the organiser and the French cyclists, the package for the participation includes all cost incurred for accommodation, meals, laundry and transportation which are paid for the French cyclists by the organiser as disbursements or out-of-pocket expenses. One of the French cyclist finished second in the competition and received a trophy and a cash prize.

The French cyclist is considered a public entertainer as he is a sports person who participated in the cycling competition together with members of his team in public. The cash prize was exempted from tax under the Income Tax (Exemption) (No.23) Order 1990. The amount of the out-of-pocket expenses or disbursements is subject to withholding tax as provided in section 109A of the ITA.

Example 4

A football club in Malaysia organised a friendly football match between the Malaysian national team and the English Premier League title holders. The match was held in March 2017 at the Stadium Putra Bukit Jalil. The English Premier League team from the United Kingdom were paid RM4.8 million by the

organiser (sum includes benefits such as accommodation, meals, laundry and transportation).

In the contracts between all the relevant parties, it was clearly stated that for administrative purposes, a management company in Malaysia was appointed by the English Premier League team merely to act as their agent during the football match in Malaysia. The duties of the agent include receiving payment on behalf of the English Premier League team but the agent has no right to use and enjoy the sum received. The English Premier League team are the actual recipients of the payment.

The players in the English Premier League team are considered public entertainers as they are sportspersons who performed as a sports team in public. The payment of RM4.8 million made to the English Premier League team is subject to withholding tax as provided in section 109A of the ITA.

Example 5

An international super model from the USA arrived in Malaysia on 1.3.2017 to participate in a fashion show, a commercial and a photo shoot for a fee of USD100,000.

The super model is considered a public entertainer as she participated in a fashion show for the viewing of the public. As the super model had used her personal skills for the commercial and photo shoot, she would therefore be considered a public entertainer. The full fee is subject to withholding tax as provided in section 109A of the ITA.

Example 6

A production company in Malaysia engaged the tallest man and the shortest man in the world both of whom are from Asia to appear in a local action packed movie filmed in Malaysia in 2017. Both men were not actors by profession. They were paid USD200,000 each for a once-in-a-lifetime appearance in the Malaysian movie.

Although both men were not actors by profession but their once-in-a-lifetime performance in the movie is similar in nature to the activities of an artiste. Therefore they are classified as public entertainers and the payments made to both men are subject to withholding tax as provided in section 109A of the ITA.

Example 7

A football legend from the United Kingdom arrived in Malaysia on 1.3.2017 to become a commentator for a live telecast football match between a popular English football team and the Malaysian national football team. The football legend is a well known personality in the sports industry.

The football legend is considered a public entertainer although he was only providing a commentary of the football match and not performing in sports. He has used his personal and physical skill to be the football commentator for a live television broadcast. The payment made to the commentator is subject to withholding tax as provided in section 109A of the ITA.

Example 8

A renowned corporate leader from the USA arrived in Malaysia on 1.2.2017 for–

- (a) a speaking engagement on leadership at an international conference; and
- (b) an interview by a local television station in front of an audience.

A fee of RM900,000 was paid by the organiser.

The visiting conference speaker is a public entertainer who presented a live talk in public. The fee received by the visiting speaker is subject to withholding tax as provided in section 109A of the ITA.

Note

If the agreement for the speaking engagement by the renowned corporate leader from the USA does not involve a fee paid by the organiser but only a reimbursement for the cost of air fare, accommodation, meals and transportation, the reimbursement would be subject to withholding tax under section 109A of the ITA as they are benefits enjoyed by the non-resident.

Example 9

A renowned lecturer in finance from a leading university in the USA arrived in Malaysia to present a lecture at a public seminar in April 2017. He was paid RM500,000.

The lecturer is a public entertainer and subject to withholding tax as provided in section 109A of the ITA.

7.2 Person not considered a public entertainer

Example 10

A television station in Malaysia organised a reality-singing competition in January 2017. Among the contestants were students, amateurs (individuals who engage in singing for pleasure) and professional singers (individuals who engage in singing as a means of livelihood) from Malaysia and South East Asia. The organiser provided accommodation and the basic necessities for the contestants throughout the duration of the competition. No payments or allowances were paid to the contestants. The winner of the competition

received a cash prize of RM100,000. The contestants performed live before a studio audience and television viewers. The rehearsals and the daily activities of the contestants were recorded and aired as part of the reality show.

Contestants who are not professional singers would not be considered public entertainers as they are not exercising any profession, vocation or employment similar to a public entertainer. If the cash prize being a reward as a result of obtaining the highest number of votes from television viewers is won by a non-resident contestant who is not a professional singer, the prize money may be taxable under paragraph 4(f) of the ITA. Such winners would be subject to withholding tax under section 109F of the ITA. Further information may be obtained from Public Ruling No.1/2010 dated 19.4.2010 entitled "Withholding Tax on Income under Paragraph 4(f)".

If the cash prize is won by a contestant who is a foreign professional singer, the cash money would be subject to withholding tax under section 109A of the ITA as he is considered a public entertainer.

Note

If a foreign artiste is involved in a reality show as a panel judge or jury, payments made to him would be subject to withholding tax under section 109A of the ITA. This is because the foreign artiste uses his artistic and personal skills to carrying out his role as a panel judge or jury on the reality show for television broadcast.

- 7.3 Public entertainer under employment contract and performs in Malaysia for less than 60 days

Example 11

A musical theater producer in Malaysia produced a musical which required a pit orchestra comprising of 20 musicians. The producer made arrangements with a USA musical theater to second two of its violinists under employment to Malaysia from 1.3.2017 to 15.4.2017 (45 days). The Malaysian producer agreed to pay the remuneration and other benefits due to the violinists while they were on secondment to Malaysia.

The violinists from the USA were public entertainers as they are artistes performing on stage. Although the violinists were in Malaysia for less than 60 days in the year 2017, the tax exemption for their short term employment under paragraph 21 of Schedule 6 of the ITA during their secondment to Malaysia does not apply by virtue of subparagraph 22(b) of Schedule 6 of the ITA. The payments made to the violinists are subject to withholding tax as provided in section 109A of the ITA.

Example 12

The facts are the same as in Example 11 except that remuneration and benefits to the two violinists were paid by a government agency of the USA.

The payment received by the public entertainers was income from an employment exercised by them and since their income was paid out of public funds of a Government of a country outside Malaysia, the income would be tax exempt by virtue of subparagraph 22(b) of Schedule 6 of the ITA.

- 7.4 Gross income of a public entertainer includes both monetary and non-monetary payments such as fees, prize money, allowances (per diem) and reimbursements or disbursements for benefits enjoyed by the non-resident public entertainer such as accommodation, meals, air fare and tax borne by a sponsor.

Example 13

A top seeded badminton player from China participated in the 2017 Malaysian Tournament held in Kuala Lumpur, Malaysia from 1.3.2017 to 5.3.2017. The Malaysian Tournament was sponsored by M (Sales) Sdn Bhd, a Malaysian subsidiary of an American multinational corporation which is engaged in the design, development and worldwide marketing and selling of footwear, apparel, equipment, accessories and services. The badminton player wore footwear and apparel of the American company throughout the competition, both on the badminton court and at tournament-related events. M (Sales) Sdn Bhd paid the badminton player USD1,000,000 to wear the company's brand of footwear and apparel at all events in which he competes in 2017 in Malaysia. Disbursements for accommodation, meals and air fare for the badminton player amounting to RM20,000 was borne by the sponsor. A cash prize of USD50,000 was won by the player.

The badminton player from China is a public entertainer as he is a sports person. The cash prize of USD50,000 was exempted from tax under the Income Tax (Exemption) (No.23) Order 1990. The amount of out-of-pocket expenses or disbursements and payment received by the badminton player for wearing the company's footwear and apparel is considered as gross income derived from Malaysia. As such, he is subject to withholding tax as provided in section 109A of the ITA.

- 7.5 A public entertainer often receives payments which relate directly or indirectly to the performances other than fees for his actual performances such as appearance fees and a share of the gate receipts. Other payments include fees from image rights (e.g. the use of the public entertainer's name, signature or personal image) to promote or advertise the sponsor's products.

Example 14

A successful Formula One (F1) driver from the USA arrived in Malaysia on 25.1.2017 to participate in a F1 Grand Prix. In addition, he also received a separate endorsement payment to drive a particular model of car, make an appearance at an auto dealership fair and wear a visor with the corporate logo of the sponsor during the F1 Grand Prix.

The F1 driver is a public entertainer as he is a sportsman. The endorsement payment related to the activities of the F1 driver during the F1 Grand Prix in Malaysia would be subject to withholding tax as provided in section 109A of the ITA.

Example 15

A Malaysian production company engaged 3 actors from Hong Kong and a stuntman from China for the production of a television programme. Filming took place at various locations in Malaysia from 1.4.2017 to 30.4.2017. Payment to the foreign actors and stuntman was paid and borne by the Malaysian production company.

The payments made to all the actors and stuntman are subject to withholding tax as provided in section 109A of the ITA. Stuntmen are the faceless action heroes of film and television who perform risky action scenes for films and television. They are exercising a profession which is similar in nature to that of an artiste who is a public entertainer.

Example 16

A performing arts centre in Malaysia received a sponsorship of RM400,000 from JK Sdn Bhd to put up an arts, cultural or heritage activity approved by the Ministry of Tourism and Culture on 15.1.2017. The performance organised by the performing arts centre involved 2 British actors who were paid by the centre.

The payment received by the 2 British actors from the performing arts centre is subject to withholding tax as provided in section 109A of the ITA.

8. Tax Rate on Income of Non-Resident Public Entertainers

Income of a non-resident public entertainer (other than a company) consisting of remuneration or other income in respect of services rendered in Malaysia is taxed at the rate of 15% on the gross amount [Part II of Schedule 1 of the ITA].

9. Computation of Tax

9.1 Tax is computed on the gross remuneration or other income in respect of services performed or rendered in Malaysia by a public entertainer. In the case where a public entertainer performs or renders services as a member in a group or a team, tax is computed by the IRBM on the collective income of the members in the group/team or the value of the contract, whichever is applicable. An income tax reference number (with the prefix FA) will be registered in the name of the group/team. The tax that is borne by the public entertainer or the group/team has to be withheld by the payer and remitted to the Director General of Inland Revenue (DGIR).

9.2 The proportion of a public entertainer's worldwide income from concerts, sponsorship, endorsement, advertising or image rights that is chargeable to tax in Malaysia would depend on the precise wordings of the contract. The proportion of any such income must be calculated on a just and reasonable basis. Payments relating to a public entertainer's worldwide activities (as per the contract) must be apportioned to determine the amount that is connected to his performance in Malaysia. The total income from a contract can be apportioned using the following formulae:

$$\frac{\text{Total number of days working in Malaysia in a year}}{\text{Total number of days working worldwide in a year}} \times \text{Gross Income}$$

Or

$$\frac{\text{Total number of concerts performed in Malaysia in a year}}{\text{Total number of concerts performed worldwide in a year}} \times \text{Gross Income}$$

9.3 Computation of withholding tax borne by a public entertainer

Example 17

A professional singer from Hong Kong was engaged to perform in Malaysia for 14 days in 2017. The singer received the following payments from the organiser, Company A:

Artiste fees	RM20,000
Hotel accommodation	RM250 per day
Cost of air fare	RM3,500

Company A has to deduct the withholding tax as follows:

	RM
Artiste fees	20,000
Hotel accommodation (RM250 X 14 days)	3,500
Air fare	<u>3,500</u>
Total payment	27,000
Less:	
Withholding tax (15%)	<u>4,050</u>
Payment made to the artiste	<u>22,950</u>

Example 18

A hotel in Kuala Lumpur contracted a band known as The Strollers from the Phillipines comprising of a band leader and 2 singers for a period of 3 months from 1.3.2017 to 31.5.2017 to present daily live performances. The hotel provided the band accommodation and laundry for the period they were performing in Kuala Lumpur. The contract value for the band was as follows:

	RM
Band (a leader and 2 singers)	6,300
Daily food allowance – RM15 per person	4,140
Accommodation – staff quarters	1,350
Laundry	<u>900</u>
Total	<u>12,690</u>

The hotel has to deduct the withholding tax as follows:

	RM
Total payment	12,690
Less:	
Withholding tax (15%)	<u>1,903.50</u>
Payment made to the band	<u>10,786.50</u>

Example 19

A professional golfer from Japan was in Malaysia to participate in a golf tournament sponsored by a company in Malaysia from 22.1.2017 to 25.1.2017. He entered a tournament agreement with the company to provide the following services in connection with the tournament –

- (i) hosting a golf clinic for 60 minutes;
- (ii) attending a press conference at the beginning of the tournament week;
- (iii) attending the prize giving ceremony (if finished in top 3);

- (iv) signing of the tournament merchandise in a maximum of 50 items including shirts, caps, posters and printed material for VIP guests;
- (v) providing one signed golf club or equivalent item which is to be given to the title sponsor of the tournament;
- (vi) attending a video shoot (promotion) for use during the tournament week; and
- (vii) meeting the spectators, for a duration of 15 minutes at the tournament venue during the tournament week.

The player was paid RM1,000,000 for the services stated in the agreement. No other expenses were borne by the company.

The income derived by the non-resident professional golfer considered as a public entertainer in respect of the services performed in Malaysia is subject to withholding tax under section 109A of the ITA. The withholding tax deducted and remitted to the DGIR is computed as follows:

	RM
Total payment	1,000,000.00
Less:	
Withholding tax (15%)	<u>150,000.00</u>
Payment made to the golfer	<u>850,000.00</u>

Example 20

A soft drink company in Malaysia sponsored a series of concerts in countries where a popular British singer was engaged to perform. An event management company was appointed by the soft drink company to make all the necessary arrangements for a fee of RM50,000. The singer was paid a fixed amount of USD300,000 for the performance of a number of concerts in 3 countries plus 5% of the ticket sales for each concert in 2017. The number of concerts held and ticket sales in the following countries are as shown below:

Countries	Number Of Concerts	Total Ticket Sales (RM)	5% Of Total Ticket Sales (RM)
Malaysia	5	500,000	25,000
Singapore	4	650,000 ¹	32,500 ²
Phillipines	6	800,000 ³	40,000 ⁴
Total	15	1,950,000	97,500

^{1,2}Converted from Singapore dollar

^{3,4}Converted from Philippine peso

The proportion of income subject to withholding tax is determined as follows:

$$\frac{\text{Number of concerts held in Malaysia}}{\text{Total number of concerts held worldwide in 2017}} \times \text{Gross Income}$$

$$\frac{5}{15} \times \text{USD}300,000 = \text{USD}100,000 \text{ (@ RM4)} = \text{RM}400,000$$

[In 2017 it is assumed that the foreign exchange rate is USD\$1 = RM4]

Gross income derived from Malaysia was RM425,000 (RM400,000 + RM25,000).

The withholding tax would be RM63,750 (RM425,000 @ 15%).

- 9.4 Computation of withholding tax where payment is made to an authorised agent of the public entertainer

Example 21

The facts are the same as in Example 19 except that the payment of RM1 million was paid to KIG Worldwide Inc., an authorised agent of the golfer.

The computation of withholding tax is the same as shown in Example 19 although the payment was made to an agent.

- 9.5 Payment made to public entertainer in non-ringgit currency

Example 22

The facts are the same as in Example 19 and –

- (a) the Malaysian company's financial year end is 31 December; and
- (b) payment for services rendered from 22.1.2017 to 25.1.2017 by the non-resident professional golfer from Japan was USD300,000 instead of RM1 million. The payment for the services was made on 29.3.2017 and the due date for the payment of withholding tax was 28.4.2017.

For purposes of determining the amount of withholding tax, the payment in foreign currency of USD300,000 has to be converted to Ringgit

Malaysia at the prevailing foreign exchange rate on the date the payment was made (i.e. 29.3.2017). The withholding tax is to be computed based on the amount in RM on that date. Assuming that the foreign exchange rate on 29.3.2017 was RM4.30 = USD1, the withholding tax would be RM193,500 [(USD300,000 @ 4.30) X 15%].

10. Application to Film and Perform in Malaysia

The Central Agency for Application for Filming and Performance by Foreign Artistes (PUSPAL), a one-stop agency under the Ministry of Communications and Multimedia Malaysia processes all applications for filming and performances by foreign artistes in Malaysia. For further information please refer to PUSPAL Guidelines at the website i.e <https://epuspal.kkmm.gov.my>.

The definition of a foreign artiste is not limited to PUSPAL's definition as stated in its guidelines. Withholding tax under section 109A of the ITA is applicable to an artiste who falls within the definition of public entertainers under section 2 of the ITA (as stated in paragraph 3.5 of this PR) and this is inclusive of a foreign artiste who enters Malaysia under a social visit pass.

11. Public Entertainers Other than Filming and Foreign Artistes

A sponsor or an organiser is still required to submit information and details to the IRBM relating to a non-resident public entertainer –

- (a) who is attending or performing in any sports event, tournament, competition or any other event in Malaysia; and
- (b) who does not fall under the PUSPAL Guidelines

before that non-resident public entertainer performs in Malaysia. Among the documents required are:

- (i) Form Performa B;
- (ii) Contract between the sponsor/organiser and the public entertainer; and
- (iii) Copy of the public entertainer's passport with details of his arrival and departure dates in Malaysia.

Information and details relating to a non-resident public entertainer that does not fall under the PUSPAL Guidelines are to be sent to the following IRBM branches:

STATE	ADDRESS
All States in Peninsular Malaysia	Lembaga Hasil Dalam Negeri Malaysia Cawangan Duta Tingkat bawah, 1 -10, Blok 8A Kompleks Pejabat Kerajaan Jalan Tuanku Abdul Halim 50600 Kuala Lumpur
Sabah and Federal Territory of Labuan	Lembaga Hasil Dalam Negeri Malaysia Cawangan Kota Kinabalu Menara Hasil Jalan Tuanku Abdul Rahman 88600 Kota Kinabalu
Sarawak	Lembaga Hasil Dalam Negeri Malaysia Cawangan Kuching Pusat Bayaran Kuching Unit Operasi Kutipan Cukai Aras 1, Wisma Hasil No. 1, Jalan Padungan 93100 Kuching Sarawak

The sponsor or organiser of any sports event, tournament, competition or any event in Malaysia is responsible for the payment of withholding tax under section 109A of the ITA.

12. Remittance of Tax

- 12.1 The withholding tax mechanism imposes the responsibility on the payer to collect tax at source on behalf of the DGIR from the income derived by a non-resident public entertainer. The withholding tax (whether or not the tax is so deducted) must be paid to the DGIR within one month after paying or crediting the payment to the non-resident public entertainer.
- 12.2 A payer, normally a person carrying on a business in Malaysia, is responsible for deducting and remitting the amount of withholding tax as provided in section 109A of the ITA to the DGIR and paying the recipient the net amount.

A sponsor or an organiser must remit the withholding tax payable to the DGIR in respect of filming and performances by foreign artistes that fall under the PUSPAL Guidelines to PUSPAL (for further information please refer to paragraph 10 of this PR).

Similarly a sponsor or an organiser of any sports event, tournament, competition or any event in Malaysia which involves the participation of a non-resident public entertainer must remit the withholding tax **in the form of cash or bank draft only together with Form 154** to IRBM's Payment Centre. The relevant Payment Centre would depend on the location of the branch handling the income tax file of the sponsor or organiser.

STATE	ADDRESS
Peninsular Malaysia	Lembaga Hasil Dalam Negeri Malaysia Pusat Bayaran Kuala Lumpur Tingkat Bawah & 15, Blok 8A Kompleks Pejabat Kerajaan Jalan Tuanku Abdul Halim, Karung Berkunci 11061 50990 Kuala Lumpur
Sabah and Federal Territory of Labuan	Lembaga Hasil Dalam Negeri Malaysia Pusat Bayaran Kota Kinabalu Tingkat Bawah, 3 & 4 Menara Hasil Jalan Tuanku Abdul Rahman 88600 Kota Kinabalu
Sarawak	Lembaga Hasil Dalam Negeri Malaysia Pusat Bayaran Kuching Unit Operasi Kutipan Cukai Aras 1, Wisma Hasil No.1 Jalan Padungan 93100 Kuching Sarawak

Unlike other tax payments, **withholding tax cannot be paid through all banks including authorised banks.**

13. Consequences of Not Remitting Tax

- 13.1 Where a payer fails to pay any amount of withholding tax due to the DGIR as provided in section 109A of the ITA, that amount which he fails to pay shall be increased by a sum equal to 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 109(2) of the ITA].
- 13.2 Where the remuneration or other income in respect of services performed or rendered in Malaysia by a non-resident public entertainer from which tax is

deductible under section 109A of the ITA, and the payer fails to deduct and remit the tax to the DGIR in accordance with subsection 109(2) 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)(q) of the ITA]. However, if the payer subsequently pays the withholding tax together with the increased amount (as stated in paragraph 13.1), that payment to the non-resident public entertainer can be subsequently allowed as a deduction [proviso to paragraph 39(1)(q) of the ITA].

- 13.3 In addition to the increased sum due to late payment mentioned in paragraph 13.1 above, the DGIR is empowered to impose a penalty under subsection 113(2) of the ITA if –
- (a) the withholding tax deduction is made or paid after the due date for the furnishing of an Income Tax Return Form (ITRF) for a year of assessment (and the ITRF has been accepted as correct) that relates to the payment in respect of services performed or rendered in Malaysia by a non-resident public entertainer, and
 - (b) a deduction for expenses related to such payment is made in the ITRF furnished or claimed in the information given to the DGIR (and the information is accepted as correct) in arriving at the adjusted income of the payer [proviso to paragraph 39(1)(q) of the ITA].

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 or 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 for incorrect ITRF.

In the case of additional assessments issued and arising from the disallowance of expenses in respect of payment to a non-resident public entertainer, when the payer has complied with the withholding tax requirements, the said expense would be allowable, but the penalty under subsection 113(2) of the ITA is maintained.

14. Appeal by a Payer on Payment of Withholding Tax

Effective 1.1.2013, a payer who is liable to make payment of withholding tax as provided in section 109A of the ITA may appeal to the Special Commissioners of Income Tax under section 109H of the ITA by reason that the withholding tax is not liable to be paid under the ITA. The appeal has to be made within 30 days from the date the withholding tax is due to be made to the DGIR.

15. Double Taxation

- 15.1 Generally, most countries levy withholding tax on the performance fees of non-resident artiste and sportsman being fees arising from exercising a profession or vocation and are business income. The public entertainer does not have a permanent establishment in the state of performance. He may also report his foreign income in his country of residence. As a consequence double taxation may occur. Double taxation may be eliminated in the state of residence by either exempting the foreign income or granting the public entertainer a foreign tax credit.
- 15.2 Malaysia has entered into agreements with a number of countries that avoid double taxation by allocating taxing rights over bilateral income flows between the respective treaty partners. According to the Article on Artistes and Sportsmen (usually Article 17 or 18) in the Agreement for the Avoidance Of Double Taxation (DTA), the country in which the activities of a non-resident public entertainer are performed is allowed to tax the income derived from such activities. This differs from that applicable to the income derived from other types of activities making it necessary to determine questions such as who is an entertainer or sportsman and what are the activities of an entertainer or sportsman.

16. Non-Application

Section 109A of the ITA is not applicable to the following classes of persons or individuals in respect of certain types of income:

- (a) Any person who is a professional sportsman or sportswoman, participating in any sports tournament is exempted from payment of income tax in respect of prize moneys received by him or her from such tournament [P.U.(A) 428/1990];
- (b) Non-resident film companies, actors and film crews who are in Malaysia are exempted from the payment of income tax in respect of income derived from filming activities commencing on or after 31.3.1999 which has been approved by the Jawatankuasa Filem Asing, Ministry of Home Affairs, Malaysia [P.U.(A) 321/1999];
- (c) The driver of a racing car or motorcycle is exempted from the payment of tax in respect of the gross income earned from competing in races of international standard held in Malaysia [P.U.(A) 501/2000]; and
- (d) A promoter of car or motorcycle races is exempted from the payment of tax in respect of 50% of the statutory income derived from the organisation of races of international standard held in Malaysia [P.U.(A) 501/2000].



17. Examination of Transactions

The DGIR reserves the right to examine the position of a transaction more closely where circumstances so require.

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