



**INLAND REVENUE BOARD OF MALAYSIA**

**GUIDELINES ON TAXATION OF  
ELECTRONIC COMMERCE TRANSACTIONS**

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## ACRONYMS

DTA	-	Double taxation agreements
e-commerce	-	Electronic Commerce
e-CT	-	Electronic commerce transaction
ICT	-	Information and Communications Technology
ITA 1967	-	Income Tax Act 1967
IRBM	-	Inland Revenue Board of Malaysia
OECD	-	Organisation for Economic Co-operation and Development
YA	-	Year of Assessment
PE	-	Permanent Establishment

# **GUIDELINES ON TAXATION OF ELECTRONIC COMMERCE TRANSACTIONS**

## **1.0 INTRODUCTION**

- 1.1 Inland Revenue Board of Malaysia (IRBM) has introduced guidelines on taxation of e-commerce that was published on 1 January 2013. With the evolvement of the e-commerce transactions (e-CT) and the emerging of new business models, there is a need to replace the existing guidelines.
- 1.2 Therefore this new guideline seeks to provide some guidance on income tax treatment in respect of e-CT. Currently there is no specific provisions under the ITA 1967 governing e-CT, as such the current tax law and interpretations are applicable to determine taxability in this context.
- 1.3 IRBM adopts the principle of neutrality where both e-CT and conventional transactions are subject to the same tax treatment. As such, taxpayers in similar situations and carrying out similar transactions should be subjected to the same tax treatment.

## **2.0 INTERPRETATION**

For the purpose of this guidelines –

**“digital currency”** means a digital representation of value which is recorded on a distributed digital ledger whether cryptographically-secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including through the crediting or debiting of an account.

“**digital token**” means a digital representation which is recorded on a distributed digital ledger whether cryptographically-secured or otherwise.

“**e-commerce transaction**” means any sale or purchase of goods or services, conducted over any networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-CT can be between enterprises, households, individuals, governments, and other public or private organisations.

“**Royalty**” has the same meaning assigned to it under subsection 2(1) of the ITA 1967.

### 3.0 e-COMMERCE BUSINESS MODELS

3.1 The e-Commerce has given rise to a number of new business models. Some of the models may complement or overlap with each other (e.g., payment service could be described under e-commerce or under cloud computing). The business models are by no means exhaustive. The innovation in the e-CT allows the rapid development in new business models. The common new business models are identified as follows:

No.	Business Model	Description
1.	Online trading/ service providers	<ul style="list-style-type: none"><li>➤ Sale or purchase of goods/services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders.</li><li>➤ Gathering and analysing data on customers, to provide personalised service, advertising and manage logistics and supply stores with products</li></ul>

No.	Business Model	Description
		<ul style="list-style-type: none"> <li>➤ However, the payment do not have to be done online</li> <li>➤ Example of the modus operandi:               <ol style="list-style-type: none"> <li>a. Online Retailers. e.g.: Lazada, Qoo10, Amazon, e-Bay</li> <li>b. Providing online educational services such as online tutor, e-books, video tutorials. e.g.: <a href="http://fam.mediaprimalabs.com/">http://fam.mediaprimalabs.com/</a></li> <li>c. Providing online consultation services such as service provided by doctors / prescriptions online, health and lifestyles consultations e.g.: <a href="http://www.doctoroncall.com.my">www.doctoroncall.com.my</a></li> </ol> </li> </ul>
2.	App stores	<ul style="list-style-type: none"> <li>➤ A type of digital distribution platform for software</li> <li>➤ Accessible through consumers' device whereby consumer can browse, view, purchase and automatically download and install on the device</li> <li>➤ Example of the modus operandi:               <ol style="list-style-type: none"> <li>a. Subscription based offered by any companies or individuals e.g.: Spotify (apps for audio streaming), iflix, netflix (both apps for video streaming)</li> <li>b. Services offered online via internet or electronic medium e.g.: park by phone, web design, programming, apps development, online tuition, web hosting, aggregator (trivago, skyscanner, traveloka), myeg</li> <li>c. Self-broadcasting through online platform for generating income from viewers e.g.: Youtube, Bigo Live</li> </ol> </li> </ul>
3.	Online advertising	<ul style="list-style-type: none"> <li>➤ Uses the Internet as a medium to target and deliver marketing messages to customers</li> <li>➤ It is in a form of display ads and search engine ads</li> <li>➤ Example of the modus operandi:               <ol style="list-style-type: none"> <li>a. Income generated from advertising on online platform either directly or indirectly. Advertising activities can be in the form of advertising space, product reviews and advertorial. Payments can be received directly from advertisers or using</li> </ol> </li> </ul>

No.	Business Model	Description
		<p>intermediaries such as Google AdSense or Nuffnangs. e.g.: Instagram paid reviews, Google, Facebook, Blogger</p>
4.	Cloud computing	<ul style="list-style-type: none"> <li>➤ Provision of standardised, configurable, on-demand, online computer services which can include computing, storage, software, data management, using shared physical and virtual resources.</li> <li>➤ Online services where users can access the service using various types of device provided that they have internet connection.</li> <li>➤ It is a cost effective alternative to purchasing and maintaining customers' own IT infrastructure</li> <li>➤ Advantage of this business model is it is largely driven by economies of scale in setting up the infrastructure and maximising server usage by sharing space among clients whose need for space and processing power may vary on a flexible basis.</li> <li>➤ Most common cloud computing services: <ul style="list-style-type: none"> <li>- Infrastructure-as-a-service</li> <li>- Platform-as-a-service</li> <li>- Content-as-a-service</li> <li>- Data-as-a-service</li> </ul> </li> <li>➤ Example of the modus operandi for cloud computing: <ol style="list-style-type: none"> <li>a. Peer-to-peer (P2P) based activity of acquiring, providing or sharing access to goods and services that are facilitated by online platform. The goods could be rooms, apartments, house or vehicles. e.g.: AirBNB, Uber, O-Bike, matdespatch, runner2u</li> <li>b. Practice of funding a venture by raising money from a large number of people using online platform. e.g: mystart sdn bhd, pitch platforms sdn bhd.</li> </ol> </li> </ul>

No.	Business Model	Description
5.	Payment services	<ul style="list-style-type: none"> <li>➤ Payment via online transaction between online purchasers and sellers</li> <li>➤ Payment methods may use credit card, direct debit facilities, real-time bank transfers or direct deposit.</li> <li>➤ Other alternatives of payment methods are cash payment solutions; E-wallets / cyber wallets and mobile payment solutions</li> <li>➤ Example of payment gateways available in Malaysia:               <ul style="list-style-type: none"> <li>a. Companies and individuals providing financial services through online platform. e.g.: ipay88, MOLPay, Boost.</li> </ul> </li> </ul>
6.	Digital Currency/ token	<ul style="list-style-type: none"> <li>➤ Mining of the digital currency or digital token.</li> <li>➤ Buying and selling the digital currency or digital token.</li> <li>➤ Example of digital currencies or digital token transacted in Malaysia's market:               <ul style="list-style-type: none"> <li>a. BitCoin, Ripple and Ethereum</li> </ul> </li> </ul>

#### 4.0 SCOPE OF CHARGE

4.1 Generally, income tax is imposed on the income of any person accruing in or derived from Malaysia.

4.2 Any income in relation to e-CT is deemed to be derived from Malaysia if it is associated to any activities in Malaysia regardless of whether that income is received in Malaysia or otherwise.

4.3 A non-resident person who derives income from e-CT may also be deemed to derive that income from Malaysia in relation to:

- a. Special classes of income; and
- b. Royalty.



## **5.0 SCOPE OF TAX LIABILITY FOR BUSINESS**

5.1 For business income, where the business operations are carried on in Malaysia, the income of the person attributable to those business operations is deemed to be derived from Malaysia. The determination of whether or not an income is derived from Malaysia is a question of fact and degree. The wider the scope and extent of the business operations in Malaysia, the greater the likelihood that the income of that operations is subject to tax in Malaysia.

5.2 Pursuant to Section 2 of ITA 1967, business is defined to include profession, vocation and trade and every manufacture, adventure or concern in the nature of trade, but excludes employment. This would include carrying a business via company or an individual performing or rendering services. Thus, the following example is to illustrate this point -

### Example 1

Miss Orangee is an active blogger in fashion through her social media accounts (eg. Instagram or Facebook etc) and gained more than 1 million followers in those platform(s) because of her popularity. Assuming that for YA 2017, Miss Orangee received income from advertising space and product reviews of RM4 million. That income is taxable under Section 4(a) of ITA 1967 based on the facts that she is carrying on the activity by way of a profession.

5.3 In the case where a DTA is applicable, in order to determine whether Malaysia has taxing rights over the business income is based on whether PE exists.

## **6.0 SCOPE OF TAX LIABILITY FOR SPECIAL CLASSES OF INCOME**

- 6.1 Under Section 4A of ITA 1967 special classes of income received by a non-resident person is subject to tax in Malaysia via withholding tax under section 109B ITA 1967.
- 6.2 Any amount paid in consideration of any advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme in relation to e-CT can be classified as special classes of income.
- 6.3 The derivation of Special Classes of Income 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.

Thus, the following example is to illustrate this point -

### Example 2

Hotel N a Malaysian resident is using an online service via a platform provided by sookaTravel (who is a non-resident). Under this service arrangement, Hotel N's customers can now book rooms and also make payments via this platform. Subsequently, after deducting fees or

commission from these bookings, sookaTravel will release the balance to Hotel N.

Based on the facts, if it is proven that the service is rendered in Malaysia then the fees or the commission received by sookaTravel is subject to withholding tax under section 109B ITA 1967. However, if it is proven otherwise the withholding tax on services is exempted under Income Tax (Exemption) (No.9) Order 2017.

## **7.0 SCOPE OF TAX LIABILITY FOR ROYALTY**

7.1 Any royalty paid to a non-resident in relation to e-CT will be subjected to withholding tax under section 109 ITA 1967.

7.2 Effective from YA 2017 the definition of “Royalty” has been amended where the word “software” has been added to the definition of “Royalty” where as mentioned in the ITA 1967, to include the use or the right to use of software, any transmission through satellite, payment in respect of total or partial forbearance, the use of, or the right to use of know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill and use or the right to use licences with regards to some or all of the part of the radiofrequency spectrum.

Thus, the following examples are to illustrate scenarios that fall under category of royalty payment –

### Example 3

MB Sdn Bhd (MB) undertakes the activity of online trading in scarves and accessories. MB uses a renowned social media company as a platform to advertise the sales of its products. The social media company allows its customers including MB to create its own advertisement campaign using its platform. The payment made to the social media company is classified as royalty and it is subject to withholding tax under section 109 of ITA 1967.

### Example 4

OL Sdn Bhd (OL) is a manufacturing company that uses accounting software for its financial reporting. On 2<sup>nd</sup> March 2018, OL purchased a software solution from UBS (foreign) for the amount of RM70,000 and on top of that pays an annual licensing fee of RM3,000. Based on these facts, payment for the use or the right to use software is considered as royalty under section 2 of ITA 1967. Therefore the payment of RM70,000 and licensing fee of RM3,000 is subject to withholding tax under section 109 of ITA 1967.

### Example 5

Saloma Enterprise runs an online business, selling its items worldwide through an online selling platform owned by AhBAY (who is a non-resident) Saloma Enterprise will then receive payment for the goods sold via an online payment service platform provided by Bayarkawan (who is also a non-resident.).

1. AhBAY charges the following:

- Monthly subscription fee (USD 19.95)

- Transaction fee for every successful sales (8% per successful transaction)

In the agreement between Saloma Enterprise and AhBAY, it was stated that the monthly subscription fee is related to the right to use AhBAY's application. Saloma Enterprise is also obliged to pay transaction fee in relation to services performed by AhBAY.

Under section 2 of ITA 1967, the monthly subscription fee falls under the category of payment for the use or the right to use software and it is considered as royalty. The payment is subject to withholding tax under section 109 of ITA 1967.

The transaction fee received by AhBAY on the services rendered is subjected to withholding tax under section 4A of ITA 1967. However, since the services were performed outside Malaysia it is not subject to withholding tax.

2. Bayarkawan charges the following:

- 3.9% per transaction

In the agreement between Saloma Enterprise and Bayarkawan, it was stated that the transaction charges of 3.9% will be deducted from the value of each transactions.

The transaction charges received by Bayarkawan on the services rendered is subjected to withholding tax under section 4A of ITA 1967. However, since the services were performed outside Malaysia it is not subjected to withholding tax.

7.3 For further clarifications for the above illustrations, please refer to IRBM's Practice Notes 1/2018 on Tax Treatment on Digital Advertising Provided by a Non-Resident.

**Note:**

All enquires with regards to this guideline can be forwarded to:

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