

**Subject:**

e-Announcement | Practice Note No. 1/2018: Tax Treatment on Digital Advertising Provided by a Non-Resident



# Tax Treatment on Digital Advertising

**04 April 2018**

Dear Valued Client / Business Associate,

## **Practice Note No. 1/2018: Tax Treatment on Digital Advertising Provided by a Non-Resident**

The Malaysian Inland Revenue Board (“MIRB”) has issued a Practice Note to provide guidance in relation to withholding tax (“WHT”) on income from digital advertising provided by a non-resident (“NR”). This has been a much-discussed topic following the expansion of the definition of royalty to include software as well as the government’s proposal to tax the digital economy.

The Practice Note is issued for the information of taxpayers and their tax representatives. It contains the MIRB’s interpretation and practices in relation to the tax law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Special Commissioners of Income Tax or the Courts are not affected by the application of this note.

The tax treatment on payments to a NR in relation to digital advertising would be determined by assessing the facts of the case and the Income Tax Act, 1967 (“ITA”). This covers the review of the terms of the agreement, the actual form of transactions carried out and other elements that would not be obtained in general reviews.

Based on the Practice Note, where the NR has no permanent establishment (“PE”) or business presence (“BP”) in Malaysia, the following tax treatment applies, depending on the facts of



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each particular case:-

Purpose of Payment	Tax Treatment
Purchase or use of an application (App) by the payers that allows them to create their own advertisement campaign	<ul style="list-style-type: none"><li>■ Treated as royalty income of the NR and subject to WHT of 10% under the Section 109 of the ITA.</li></ul> <p><i>The preferential treatment under the relevant Double Taxation Agreement (“DTA”) with Malaysia has to be considered.</i></p>
Does not involve the purchase or use of an App but merely a provision of service by the NR where the payers solely relies on the service provider to deal with all aspects of digital advertising	<ul style="list-style-type: none"><li>■ Treated as special class of income of the NR under Section 4A of the ITA and subject to WHT of 10% under Section 109B of the ITA.</li><li>■ Where services are rendered and performed outside Malaysia, WHT under Section 109B is not applicable, except for services rendered and performed in the period between 17 January 2017 to 5 September 2017.</li></ul> <p><i>The preferential treatment under the relevant DTA with Malaysia has to be considered.</i></p>

In the case where the NR has a PE or BP in Malaysia, the digital advertising payment received will be treated as a business income of the NR and subject to tax under Section 4(a) of the ITA. The NR will be subjected to tax compliance obligations under the ITA including filing of tax return.

In the case where WHT on the payment made to the NR is borne by the payer, the payment is considered net of tax and the WHT should be computed based on the regrossed income. The WHT borne by the payer will not be tax deductible.

To find out more details of how we can assist, please do not hesitate to contact any of our Executive Directors, Directors, Associate Directors or Managers whom you are accustomed to dealing with or who are responsible for the tax affairs of your organisation at the telephone number (603) 7721 3388.

Sincerely

**Tai Lai Kok**  
Executive Director

**Ong Guan Heng**  
Executive Director



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