



## Withholding Tax (WHT) and Double Taxation in Malaysia

(as of March 2020)

### 1. Definition

Withholding Tax (WHT) is a method of collecting taxes from non-residents who have derived income which is subject to Malaysian taxation law. Any tax resident person who is liable to make certain types of payments to a non-resident is required to deduct WHT at a prescribed rate which is applicable to the gross payment and remit it to LHDN (Malaysian Inland Revenue Board) within one month of paying or crediting.

WHT is always to be borne by the foreign resident person (see Section 107A, ITA) and therefore, the Malaysian company has the duty to deduct WHT from the invoice amount and remit WHT to LHDN within the respective time period.

### 2. Payments subject to WHT

Payments subject to WHT	Tax Rates in % *
Interests	15%
Royalties	10%
Dividends	N/A
Contract payments (services rendered in Malaysia)	
Contractor's liability	
Employee's liability	10%
	3%
Special classes of income	
Technical service fees paid to non-residents+#	
Rental of movable properties	10%
	10%
Income of a non-business/non-employment source	10%

\* A reduced rate may be provided if there is an existing double tax agreement between the treaty partners.

+ Services liable to tax are not limited to services which are technical or management in nature but refer to any advice, assistance or services rendered in Malaysia w.e.f. 28th December 2018.

# Only services rendered in Malaysia are liable to tax. However, from 17th January 2017 to 5th September 2017, services rendered in and outside Malaysia are liable to tax.

**Technical service fees** define amounts paid to a non-resident person in consideration of any advice, assistance or services rendered in connection with management or administration of any scientific, industrial or commercial undertaking, venture or scheme



(see Section 4A(ii), ITA). Technical management includes for example the provision of marketing, architectural, computer programming, legal services, and the supply of technical and software personnel. Whereas administration comprises planning, co-ordination and financial management consultation. Daily administrative works such as bookkeeping are not subject to WHT. Note that as of 28th December 2018, services subject to WHT also include non-technical services (see 3).

As per definition, **material** is not subject to WHT. When material or products are exported to Malaysia, the goods need to be declared and are subject to customs procedure (customs declaration, duty, clearance).

**Import duty and applicable taxes** levied by the Royal Malaysian Customs Department have to be settled before the material etc. can be collected. It should be addressed in any contract who has to bear these costs. Reimbursements for hotel accommodation in Malaysia are not subject to WHT either.

### 3. Amendments

WHT is applicable to technical services performed in Malaysia only. However, for the period of 17<sup>th</sup> January 2017 to 5<sup>th</sup> September 2017 technical services performed outside Malaysia are still subject to Malaysian withholding tax at the statutory rates as stipulated in the respective Double Taxation Agreements. This is due to the Finance Act 2017 which came into effect on 17<sup>th</sup> January 2017 and subjected technical services performed outside of Malaysia to withholding tax. However, the Income Tax (Exemption) (No. 9) Order 2017, which came into effect on 5<sup>th</sup> September 2017, exempts payment of taxes on such services as stated in the Practice Note 3/2017 of the LHDN.

With the Finance Act 2018, which came into effect on 28<sup>th</sup> December 2018, non-technical services also became subject to WHT. Section 19A of the Finance Act 2018 struck out the word “technical” in Section 109B, ITA, in order to reflect recent case law decisions whereby the judiciary had widened the definition of technical services to include non-technical services.

Royalties include items such as the right to use software, the reception of or the right to receive visual images or sounds transmitted to the public satellite, cable, fibre optic or similar technology etc. and therefore, are subject to 10% WHT which may be reduced under double tax agreements (see 4).

#### 4. Double Tax Treaties with Malaysia and Tax Relief

Country	Rates of WHT in %		
	Interests	Royalties	Technical Fees
China, PR	10 or N/A	10 or N/A	10
France	15 or N/A	10 or N/A	10
Germany	10 or N/A	7	7
Hong Kong	10 or N/A	8	5
Indonesia	10 or N/A	10	10
Singapore	10 or N/A	8	5
Switzerland	10 or N/A	10 or N/A	10
UK	10 or N/A	8	8

Note: There is no WHT on dividends paid by Malaysian companies.

In order to pay a reduced WHT rate under the double tax agreement, the German company has to submit a certificate of tax residence to the Malaysian business partner. Such a certificate can be applied for at the respective revenue board in Germany.

Since there exists a double tax agreement between Malaysia and Germany, companies might be able to claim a double tax relief from the German tax authorities under certain circumstances.

The German company has to request the following documents from the Malaysian business partner:

1. Copy of the form CP37D submitted to LHDN
2. Original receipt issued by LHDN (CP 6A)

#### 5. Contractual Protection of Payments

In case of any cross-border business activities, it is advisable to use contracts to protect them against locally levied taxes. Contracts should mention explicitly that the Client is entitled to the contract payment net of taxes, so that the WHT at the appropriate rate shall be borne by the payer, e.g. the Malaysian company. A respective clause can provide redress and the Malaysian-German Chamber of Commerce and Industry will gladly put you in contact with a qualified tax advisor or lawyer.



Malaysian-German Chamber  
of Commerce and Industry  
Deutsch-Malaysische  
Industrie- und Handelskammer

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**Sources:** Malaysian Institute of Certified Public Accountants/Malaysian Institute of Accountants/Chartered Tax Institute of Malaysia (2018), *2019 Budget Commentary and Tax Information*, Rawang: Vivar Printing Sdn Bhd; PwC (2019), *2019/2020 Malaysian Tax Booklet*, accessed 2<sup>nd</sup> March 2020 <<https://www.pwc.com/my/en/publications/2019/2019-2020-mtb.html>>; Deloitte (2019), *2018 Finance Bill and Related Legislation Enacted*, accessed 2<sup>nd</sup> March 2020 <<https://www.taxathand.com/article/11061/Malaysia/2019/2018-finance-bill-and-related-legislation-enacted>>.