



INLAND REVENUE BOARD MALAYSIA

**WITHHOLDING TAX ON SPECIAL
CLASSES OF INCOME**

**ADDENDUM TO
PUBLIC RULING NO. 4/2005**

Translation from the original Bahasa Malaysia text.

DATE OF ISSUE: 30 NOVEMBER 2007



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DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. 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A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.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 Inland Revenue,
Inland Revenue Board Malaysia**



**WITHHOLDING TAX ON SPECIAL CLASSES OF INCOME
ADDENDUM TO PUBLIC RULING NO. 4/2005**

1. This Addendum provides clarification on the change in tax treatment of the following:-
 - a. Exemption on specific special classes of income chargeable to tax under paragraph 4A(iii), Income Tax Act (ITA) 1967; and
 - b. the consequences of not deducting and remitting tax in relation to the special classes of income - subsection 109B(2), ITA 1967.
2. For purposes of clarity, the whole of paragraph 8 of the Public Ruling No. 4/2005 has been rearranged and is to be substituted with the paragraph below. It has also incorporated a specific exemption on the special classes of income chargeable to tax under paragraph 4A(iii), ITA 1967 in relation to income received from a Malaysian shipping company. The exemption is explained in paragraph 8.3(ii) of this Addendum.

**“8. Rent or other payments for use of moveable property - paragraph 4A(iii),
ITA 1967**

8.1 Paragraph 4A(iii), ITA 1967 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. The following are activities falling within the scope of paragraph 4A (iii), ITA 1967:-

(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

The exclusive use of a ship which is chartered, whether bare boat or with crew, will mean that the payments made to the non-resident owner of the ship fall within the ambit of paragraph 4A(iii), ITA 1967 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.

8.2 The following income does not fall within the scope of paragraph 4A(iii), ITA 1967:-

(i) **Freight charges**

Freight charges paid to non-residents in respect of export of goods are not within the scope of paragraph 4A(iii), ITA 1967 as freight charges are fees for the shipment of goods and not payments for the use of a moveable property.

8.3 The following income which is chargeable to tax under paragraph 4A(iii), ITA 1967 is specifically given exemption under the Income Tax (Exemption) Orders:-

(i) **Pooling arrangements**

A non-resident deriving income under paragraph 4A(iii), ITA 1967 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 payment of income tax under the Income Tax (Exemption) (No.25) Order 1995 - [P.U. (A) 322/1995]. Consequently, withholding tax under section 109B, ITA 1967 shall not apply to the exempted income.

(ii) **Income received from a Malaysian shipping company**

a. A non-resident person in Malaysia deriving income under paragraph 4A(iii), ITA 1967 from a Malaysian shipping company, consisting of payments made under any agreement or arrangement for the use of a ship is specifically exempted from payment of income tax under the Income Tax (Exemption) Order 2007 - [P.U. (A) 58/2007].



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The income is in relation to the use of the ship on a voyage charter or time charter or bare boat charter. Consequently, withholding tax under section 109B, ITA 1967 shall not apply to the exempted income. The exemption is effective from 2 September 2006.

- b. For the purposes of this exemption, the words below have the following meanings:-

“Bare boat” means a ship which is chartered without crew and the charterer has the exclusive use of the ship for a period or for a voyage;

“Malaysian ship” means a sea-going ship registered under the Merchant Shipping Ordinance 1952;

“Malaysian shipping company” means a resident company incorporated under the Companies Act 1965, which owns a Malaysian ship and carrying on a business of -

- a. transporting passengers or cargoes by sea on a ship; or
- b. letting out a ship; and

“ship” means a sea-going ship other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.”

3. Consequences of not deducting and remitting tax - subsection 109B(2), ITA 1967

3.1 Currently, a person who is liable to make payments to a non-resident in relation to the special classes of income chargeable to tax under section 4A, ITA 1967 has to deduct and remit withholding tax in accordance with subsection 109B(1), ITA 1967. An increased amount equal to ten per cent (10%) of the gross payments made to the non resident will be imposed on the person if he fails to deduct and remit any amount of the withholding tax. The total sum of withholding tax and the increased amount shall be a debt due from him to the Government and shall be payable to the Director General under subsection 109B(2), ITA 1967.

3.2 With effect from 2 September 2006, the increased amount to be imposed on the person if he fails to deduct and remit any amount of withholding tax is equal to ten per cent (10%) of the amount of withholding tax which he fails to pay instead of equal to ten per cent (10%) of the gross payments made to the non resident.



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Example 1:

The facts in Example 24 of Public Ruling No. 4/2005 are used and that withholding tax is due and payable on 30 September 2006.

If Golden Sdn Bhd fails to deduct and remit tax of RM5,000 due and payable on 30 September 2006, on a payment of RM50,000 chargeable to tax under section 4A, ITA 1967 to Bright Spark Ltd. , then that sum which Golden Sdn Bhd fails to pay shall be increased by RM500 (10% of RM5,000). The total sum of RM5,500 (withholding tax of RM5,000 + increased amount of RM500) shall be a debt due to the Government.

4. This Addendum forms part of the Public Ruling No. 4/2005 and is effective from 2 September 2006.

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