

# Tax Alert

A KPMG Singapore Tax Services Newsletter | April 2003

## CHANGES TO THE WITHHOLDING TAX REGIME

FROM 1 APRIL 2003

The Inland Revenue Authority of Singapore (IRAS) recently announced some changes to the withholding tax regime and issued circulars on the change. The circulars also gave clarification on the date of payment for withholding tax purposes and the taxation of income derived by non-resident professionals in Singapore. In addition to explaining the changes and clarifications made by the IRAS, we also highlight some of the pertinent points to watch for when complying with the withholding tax provisions of Singapore.

### Overview of the current withholding tax provisions

Currently, tax has to be withheld on the following types of payments made to non-residents if the payments are borne directly or indirectly by a person resident in Singapore or by a permanent establishment in Singapore or deductible against Singapore income:

Type of payment	Standard withholding tax rate*
1. Interest, commission, fees or any other payments in connection with any loan or indebtedness or with any arrangement, management, guarantee or service relating to any loan or indebtedness.	15%
2. Income derived from loans where the funds provided by such loans are brought into or used in Singapore.	15%
3. Royalty or other payments in one lump sum or otherwise for the use of or right to use any movable property.	15%
4. Rent or other payments under any agreement or arrangement for the use of any movable property.	15%
5. Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information.	15%
6. Payment for the rendering of assistance or service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information.	22%
7. Payment for the management or assistance in the management of any trade, business or profession.	22%
8. Director's remuneration.	22%
9. Payment for the acquisition of real property in Singapore where the seller is a non-resident trader who derived gains from the disposal of any real property chargeable to tax as a trading gain under section 10(1)(a) of the Income Tax Act.	15%
10. Payment for the services of non-resident professionals (excluding employees and public entertainers) who are exercising any profession or vocation in Singapore.	15%

\* The above rates may be reduced if the recipient is a resident of a country which Singapore has concluded a double taxation agreement with, in which a lower withholding tax rate is agreed upon.



**Due date for accounting the withholding tax**

Tax withheld must be accounted to the IRAS within 10 days from the date of payment or deemed payment (whichever is earlier), failing which, the payer is liable to penalty charges.

**Date of payment**

Under section 45(8)(b) of the Income Tax Act, payments shall be deemed to be have been paid even though it is not actually paid over to the other person but is reinvested, accumulated, capitalised, carried to any reserve or credited to any account however designated, or otherwise dealt with on behalf of the other person. Hence, withholding tax must be accounted to the IRAS at the earliest of the following dates:

- i) when the liability to pay the income arises, that is, when the income is due and payable; based on the terms of the agreement or contract;
- ii) when income is credited to the account of the non-resident person or is reinvested, accumulated, capitalised, carried to any

reserve or credited to any account however designated, or otherwise dealt with on his behalf; and

- iii) when actual payment is made.

The IRAS issued a circular dated 31 March 2003 to clarify what constitutes date of payment under the following situations:

- a) *Where there is a contract or agreement*

Where the contract or agreement stipulates the date on which the income accrues to the non-resident, the date of payment shall be the date of accrual as stipulated therein. If the agreement provides that the income shall accrued to the non-resident person at the end of each month, then the date of payment will be deemed to be the last day of each month.

- b) *Where demand for payment is by way of invoice*

In the case where the date of payment is not spelt out in any written contract or agreement, and the demand for payment is by way of an invoice, the

date of payment will be deemed to be the date of the invoice. Even if the local payer gives a credit term period or extends the credit period, the date of payment remains as the date of the invoice. The credit period/extension is regarded as an arrangement to defer payment as the liability to pay arises on the date of the invoice.

**Late payment penalties**

Penalties at 5% will be imposed if the withholding tax due is not accounted to the IRAS within the stipulated 10 days from the date of actual or deemed payment.

If the withholding tax is not paid within 30 days from the date of the payment or deemed payment, for each completed month that the tax remains outstanding, an additional penalty of 1% per month is imposed but up to a maximum additional penalty of 15%.

In other words, the maximum penalties due on any late withholding tax payment is 20% (i.e. 5% + 15%).

**What are the changes to the withholding tax regime?**

**Revised due date for payment of withholding tax**

With effect from 1 April 2003, the due date for payment of the tax withheld will be revised to the 15th day of the month following

the date of payment to the non-resident. This change will give payers an extended time limit to account the withholding tax to the IRAS as currently, accountability is within the relatively shorter

duration of 10 days from the date of payment. The following example shows the effect of the change:

Date of payment	Current due date	Current time limit to account withholding tax	Revised due date	Revised time limit to account withholding tax
1 April 2003	11 April 2003	10 days	15 May 2003	45 days
16 April 2003	26 April 2003	10 days	15 May 2003	30 days

### Revised regime for computation of penalty on late payment

With the revised regime on due date for payment of withholding tax, the computation of penalty will be as follows:

	Payment date	Due date	When 5% penalty imposed	When 1% penalty imposed
Current withholding tax regime	1 April 2003	11 April 2003	From 12 April 2003 on amount of withholding tax due	From 1 May 2003 - 1% for each completed month withholding tax remained unpaid (see Note 1)
Revised withholding tax regime	1 April 2003	15 May 2003	From 16 May 2003 on amount of withholding tax due	From 16 May 2003 - 1% for each completed month withholding tax remained unpaid (see Note 2)

Note: (1) If the withholding tax is not paid within 30 days from 1 April 2003, the additional penalty of 1% will be imposed for the month of April and for each subsequent completed month the withholding tax remains unpaid, up to a maximum of 15% (for 15 months).  
(2) If the withholding tax is not paid within 30 days from 16 May 2003, the additional penalty of 1% will be imposed for the month of May and for each subsequent completed month the withholding tax remains unpaid, up to a maximum of 15% (for 15 months).

### Some pertinent points to watch when complying with the withholding tax provisions for certain payments

#### Director's remuneration

The above includes fees payable to directors and the date of payment/deemed payment of such director's fees is the date the fees are voted and approved at the company's Annual General Meeting. This is notwithstanding that the fees have not been physically paid to non-resident directors.

#### Payment for acquisition of real property from non-resident seller

For this category of payment, withholding tax is only applicable where the seller is a non-resident trader who derived gains from the disposal of any real property chargeable to tax as a trading gain under section 10(1)(a) of the Income Tax Act. For this section, the IRAS has clarified that it requires any seller of real properties to file a declaration to affirm his resident status and whether he has been assessed to tax as a property trader. The buyer of the real property or his lawyer could then rely on the statutory declaration to comply with the withholding tax requirement.

#### Payment for the services of non-resident professionals

Under section 45F of the Income Tax Act, payments by local payers for the services rendered by non-resident professionals (NRP) in Singapore, are subject to withholding tax. Briefly, NRPs are individuals (excluding employees and public entertainers) exercising any profession or vocation in Singapore for less than 183 days in a calendar year. NRP operating through a foreign firm is also covered under this section.

NRPs are subject to withholding tax of 15% on their gross income/fees derived from services performed in Singapore on or after 3 May 2002. Gross income would include professional fees, airfare, accommodation and benefits-in-kind. The local payer has to complete the Form IR37C and submit the form to the IRAS with the payment for the withholding tax by the 15th of the month following the date of payment or deemed payment. For such payments prior to 1 April 2003, the withholding tax has to be accounted to the IRAS within 10 days from the date of payment or deemed payment.

However, NRPs can make an election within 45 days (30 days for payments prior to 1 April 2003) from the date of payment to have their income assessed on a net basis. The IRAS will not accept any option made after the 45 days timeframe.

Under the net basis, the NRPs will be allowed to claim deduction of allowable expenses but the net income will be subject to tax at the prevailing corporate tax rate, currently at 22%. Where the NRP makes the option for his income to be assessed on a net basis after the local payer has accounted the withholding tax of 15% on the gross fees, the Form IR37C would need to be revised and the NRP has to sign the option. Alternatively, the NRP can issue an authorisation letter to the local payer to exercise the option on his behalf. Once the option is exercised, it is irrevocable. The tax of 15% that has been withheld and remitted to the IRAS is available for set-off against the NRP's tax payable at 22%. The excess tax withheld would be refunded.

To reduce additional administrative work, the IRAS has granted a concession to allow the NRP to make an upfront option in the Form IR 37C for his income to be assessed on a net basis. The NRP can also authorise the local payer, in writing, to make the option on his behalf. As an administrative concession under this option, the cost of accommodation provided to NRPs for 60 days or less in a calendar year and airfare are not regarded as part of the gross income and thus, not taxable. However, the cost of food and ground transfers to and from the airport, being private expenses, are not deductible against the gross income. Similarly, transport expenses incurred from hotel to the venue of service and return are also not deductible. Where an upfront option is made, the local payer need only to withhold tax at 22% on the net income instead of



15% on the gross income. The tax withheld has to be remitted to the IRAS by the 15th of the month following the date of actual or deemed payment (for payments prior to 1 April 2003, the grace period is only 10 days).

Where there are multiple payments to the same NRP for the same engagement, the local payer can consolidate payments made within a 60-day period and remit the withholding tax by the 15th of the month following the last date of payment. If the NRP wishes to make an upfront option for his income to be assessed on a net

basis, the option must be made by the 15th of the month following the last date of actual or deemed payment. For this concession to apply, the interval between the first and the last payment cannot exceed 60 days and withholding tax for payments made subsequent to the 60-day period has to be accounted separately.

Where the NRP is claiming exemption under the Avoidance of Double Taxation Agreement, the NRP has to complete another form, IR 586, and submit it together with the Form IR 37C. The aforementioned forms can be downloaded from the IRAS website at [www.iras.gov.sg](http://www.iras.gov.sg)

KPMG Tax Services will be pleased to provide you with any assistance or advice you require on the withholding tax provisions. You may contact our team of Directors and Managers listed below.

For more information, please contact:

### Corporate Tax

#### Directors

Nicholas MIAO	+65 6213 2638
Albert POON	+65 6213 2622
OWI Kek Hean	+65 6213 2623
David LEE	+65 6213 2539
ENG Meng Leong	+65 6213 2417
LAM Kok Shang	+65 6213 2596
TOH Boon Ngee	+65 6213 2052
Anna LOW	+65 6213 2547
CHUNG Siew Moon	+65 6213 3066

#### Advisors

Jenny LIM	+65 6213 2630
Damian HONG	+65 6213 2640

#### Tax Directors

WONG Wah Lee	+65 6213 2654
Helen CHIANG	+65 6213 2632

#### Associate Tax Directors

TAN Keng Kor	+65 6213 2261
--------------	---------------

#### Managers

ANG Lay See	+65 6213 2586
Wendy ANG	+65 6213 2420
Andrew CAMPOS	+65 6213 2449

CHIU Wu Hong	+65 6213 2569
Richard ELLARD	+65 6213 2027
Darren FOO	+65 6213 2642
GAN Hwee Lin	+65 6213 2786
GAN Kwee Lian	+65 6213 2546
Michelle GIT	+65 6213 2643
HO Mun Chin	+65 6213 2529
LAM Nam Ying	+65 6213 2082
Gordon LAWSON	+65 6213 2864
LEE Yuet Lai	+65 6213 2636
LEONG Voon Chun	+65 6213 2528
Christina LIM	+65 6213 2566
LIM Li Peng	+65 6213 2778
Alison LOH	+65 6213 2090
LOW Kar Fong	+65 6213 2055
MAK Cheek Hong	+65 6213 3052
Leonard ONG	+65 6213 2038
TAN Lay Hoon	+65 6213 2028
Vincent TAN	+65 6213 2007
TAY Guan Chew	+65 6213 2087
TAY Hong Beng	+65 6213 2565
TEH Choon Hwee	+65 6213 2705
Pauline WOO	+65 6213 2567
YEO Lay Lay	+65 6213 2625
YUEN Mei Har	+65 6213 2268

From time to time, we bring you this Tax Alert to highlight latest tax developments, impending change to laws or regulations, current practices and potential problem areas that may impact your company.

The information herein is based on the circulars issued by the IRAS on 31 March 2003.

"Tax Alert" is issued exclusively for the information of clients and staff of KPMG Tax Services and should not be used or relied upon as a substitute for detailed advice or a basis for formulating business decisions.

**KPMG Tax Services**  
 16 Raffles Quay #22-00  
 Hong Leong Building  
 Singapore 048581  
 Telephone: +65 6213 3388  
 Facsimile: +65 6225 0984  
[www.kpmg.com.sg](http://www.kpmg.com.sg)

KPMG and the KPMG logo are trademarks of KPMG International.

© 2003 KPMG, the Singapore member firm of KPMG International, a Swiss non-operating association. All rights reserved.