

Withholding Tax (WHT) and Double Taxation in Malaysia (2018)

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 or 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	10%
- Employee's liability	3%
Special classes of income	
- Technical service fees paid to non-residents	10%
- Rental of movable properties	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.

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

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. Expanded Scope of Withholding Tax and Exemption in 2017

After having expanded the scope of Withholding Tax on 17th January 2017 (till 05th September 2017), WHT for technical services was no longer limited to services performed in Malaysia. That means that technical service fees for non-residents were subject to a WHT of 10% (cf. sec. 109B, ITA).

The Income Tax (Exemption) (No. 9) Order 2017 has been issued on 05th September to exempt a non-resident payee from the Malaysian withholding tax for services/technical services performed outside Malaysia effective from 6th September 2017 onwards. The exemption only applies to the respective incomes that are listed in sec. 4A(i) and (ii) of the ITA and does not apply to royalties. The service/technical services performed by a non-resident person outside Malaysia for the period from 17th January 2017 to 5th September 2017 are still subject to Malaysian withholding tax at the statutory rates as stipulated in the Double Taxation Agreements which Malaysia has signed with the countries concerned.

Furthermore, the definition of royalties has been expanded; henceforward 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	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.

Disclaimer of liability: This information is intended to provide a general overview on corporate income tax in Malaysia and should not be regarded as a basis for ascertaining the liability to tax in specific circumstances. No responsibility for loss to any person acting or refraining from acting as a result of any information in this overview can be accepted by Malaysian-German Chamber of Commerce and Industry. Recipients should not act on the basis of this information without seeking professional advice of a tax agent.

Sources: Malaysian Institute of Certified Public Accountants/Malaysian Institute of Accountants/Chartered Tax Institute of Malaysia (2017). *2018 Budget Commentary and Tax Information*. Rawang: Vivar Printing Sdn Bhd; PwC (2017). *2017/2018 Malaysian Tax Booklet*. Kuala Lumpur: SP Muda Printing Services Sdn Bhd.