

IRAS CIRCULAR

EXEMPTION OF PAYMENTS FOR THE USE OF OR THE RIGHT TO USE INFORMATION AND DIGITISED GOODS BY END-USERS FROM WITHHOLDING TAX

(1st Edition)



**INLAND REVENUE
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1 Introduction

- 1.1 This guide explains the exemption of payments for information and digitised goods by end-users from withholding tax as announced in the 2003 Budget Statement.
- 1.2 Generally payments made to non-residents for the use of or right to use scientific, technical, industrial or commercial knowledge or information, and digitised goods are payments falling within the scope of Section 12(7) of the Income Tax Act (ITA) and are subject to a final tax at 15% on the gross payments or at a reduced rate as provided under a tax treaty.
- 1.3 To recognize the importance of information and digital content in our quest towards a knowledge-based economy, the Government has decided to exempt such payments made by end-users to non-resident persons for information and digitised goods accruing in or derived from Singapore on or after 28 February 2003. This tax exemption is for a period of 10 years. End-users and consumers are therefore not required to withhold tax on such payments during the concession period.

2 Definitions

2.1 Information

- 2.1.1 For this exemption, "information" is defined as proprietary data or text or other content. The end-user of such information usually pays a fee for the use of such information for his personal consumption or use within his own business operations but does not have the right to exploit the copyright of the information.
- 2.1.2 Examples of information covered by this exemption include end-user subscriptions to Bloomberg, Forrester, Gartner, Lexis-Nexis, etc.
- 2.1.3 Where an information reseller acquires the master copy of information from a non-resident vendor and allow customers to purchase a copy duplicated from the master copy, the payment from the information reseller to the non-resident vendors cannot be covered by the exemption since the

information reseller has been granted the right to exploit the copyright of the information.

2.1.4 Payments for the use of or the right to use patents, trademarks, registered design, geographical indications, layout design of integrated circuit, trade secret or software¹ are not included within the scope of this exemption.

2.2 Digitised Goods

2.2.1 Digitised goods refer to images, sounds or text that are transferred through the Internet, telephone, cable network, satellite or any other form of electronic transmission to an end-user for a fee and does not include software.

2.2.2 The end-user of the digitised good pays a fee for the digitised good for a right to use the digitised good for his personal consumption or use within his business operations, but is not permitted to copy, modify or adapt the digitised good.

2.2.3 Examples of such digitised goods are online or downloadable music videos, films, MP3s, ring tones, logos, etc.

2.2.4 Where a broadcasting company acquires a movie or film from a non-resident person for the purpose of broadcasting it to its viewers, the payment made by the broadcasting company to the non-resident person will not be covered by this exemption.

3 How will the exemption be applied?

3.1 The tax exemption is effected under Section 13(4) of the Income Tax Act on payments for the use or the right to use information or digitised goods by end-users accruing on or after 28 February 2003.

3.2 The exemption applies on payments made to a non-resident person except where the payments constitute income

¹ However, payments for shrink-wrapped software, downloadable software, site licence and software bundled with computer hardware have been exempted since 2001. For details of this exemption, please refer to the E-tax guide "Exemption of Software Payments from Withholding Tax".

derived from a trade, business, profession or vocation carried on or exercised by that person in Singapore, or which is effectively connected with any permanent establishment of that person in Singapore. Where the exemption applies, the payer need not withhold tax on such payments made to a non-resident person.

4 Administrative Concession

- 4.1 Where the payments for the use or right to use information or digitised goods constitute income derived from a trade, business, profession or vocation carried on or exercised by the non-resident in Singapore, or which is effectively connected with any permanent establishment of that person in Singapore, the Comptroller of Income Tax has decided, as an administrative concession, to waive the requirement on the payer to withhold the tax on payments made to a non-resident person for the use or right to use information and digitised goods by end-users if the non-resident person carrying on or exercising a trade, business, profession or vocation in Singapore, who receives such payments, declares or continues to declare such payments as income in his annual tax return.

5 Questions and Answers

5.1 What is the rationale for giving this exemption?

This exemption aims to support Singapore's move towards a knowledge-based economy as information and other downloadable materials have become important ingredients for such an economy. Exempting such payments for information and digitised goods reduces the burden on businesses, especially if they bear the withholding tax on behalf of the non-resident supplier. At the same time, it makes it less expensive for end-users to purchase such materials.

5.2 What is the extent or scope of this exemption?

This exemption covers all payments for information and digitised goods by end-users. The end-users can be

individuals who purchase such material for personal consumption or businesses that incur such costs for use within their business operations. The end-users must not have further rights to exploit the copyright of the information or digitized goods.

5.3 Why are payments for software not included within the scope of digitized goods or purposes of the exemption?

The exemption of tax on payments for the use of software has been covered in an earlier announcement made by the Ministry of Finance and separate conditions apply. Please refer to IRAS E-Tax Guide, "Exemptions of Software Payments from Withholding Tax" for the details of the exemption of tax on software payments.

5.4 Who would benefit from this exemption?

Businesses that use information as end-users in the course of doing their business. Examples of such businesses are banks, educational institutions etc. Other businesses or individuals who pay for the use of downloadable images and sounds as end-users would benefit from this exemption too.

5.5 Will resellers of information and digitized goods be covered under the exemption?

Resellers who are merely facilitating the sale of information and digitised goods, without having any right to commercially exploit the copyright of the information or digitised goods, will be covered by the exemption. Where resellers have the right to copy, duplicate, adapt or modify the contents of such information or digitised goods, withholding tax will still apply to the payments made to the non-resident supplier.

Example 1: If Company A is given a copy of information or digitised good from a non-resident Vendor B and allows end-users to download a copy of the information or digitised goods from Company A's electronic facilities (such as the website or through telephone), Company A has been given the right to commercially exploit the copyright of the information or digitised good. Company A cannot qualify as an end-user and the payments to Vendor B will not be covered under the exemption.

Example 2: If Company A purchased 10 copies of information or digitised goods from a non-resident Vendor B, and sells the 10 copies to its customers without retaining any copies of the information or digitised goods acquired, the payment from Company A to Vendor B is not subject to withholding tax since Company A is only buying trading stocks for its business and is not paying for any right to exploit the copyright of the information or digitised goods.

5.6 Why is the exemption granted for a period of 10 years only?

The sunset clause is to allow Ministry of Finance to review the effectiveness of this exemption at the end of the concession period.

5.7 Does one need to apply for any special approval to enjoy this exemption?

No approval is required. However, where it is unclear whether the exemption applies, such cases should be referred to IRAS for consideration on a case-by-case basis.

If you have any queries, please do not hesitate to email us at iras@iras.gov.sg or

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