

IRAS e-Tax Guide

Clarification on the Tax Treatment of Directors' Fees Derived by Non-Resident Directors of Companies that have no Presence in Singapore



INLAND REVENUE
AUTHORITY
OF SINGAPORE

Published by
Inland Revenue Authority of Singapore

Published on 09 March 2004

Revised on 1 Dec 2011
[To insert paragraph 7]

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CLARIFICATION ON THE TAX TREATMENT OF DIRECTORS' FEES DERIVED BY NON-RESIDENT DIRECTORS' OF COMPANIES THAT HAVE NO PRESENCE IN SINGAPORE

AIM

1 Enquires have been received regarding whether non-resident directors of companies that have no presence in Singapore are liable to tax in Singapore if they come to Singapore for board meetings. This circular seeks to clarify that directors' fees derived by such non-resident directors of companies that have no presence in Singapore at all are not subject to tax on the fees. A company has no presence in Singapore at all if the company does not have any permanent establishment in Singapore and does not carry on any trade or business in Singapore.

CURRENT TAX TREATMENT

2 Directors' fees are normally sourced in the country where a company is resident because all the functions of the directors in determining and controlling activities to earn the profits of the company are carried out in that country. As a corollary, it is normal for directors' fees to be allowed as a deductible expense only in the country where the company is a resident.

3 However the definition of "employee" in section 2(1) of the Singapore Income Tax Act (ITA) includes a director of a company. Based on this definition, directors' fees paid by a non-resident company to its directors could be considered as gains from an employment exercised in Singapore to the extent the fees are attributable to attendance at board meetings held in Singapore. Consequently, such fees that are attributable to attending board meetings in Singapore are subject to Singapore tax by virtue of section 12(4) of the ITA which taxes income derived from an employment exercised in Singapore notwithstanding that the company paying the fees is a non-resident and does not have any presence in Singapore.

4 Although the fees attributable to attendance at board meetings in Singapore that are derived by non-resident directors in the said circumstances fall to be taxed in Singapore as remuneration from employment, the exemption provided under section 13(6) of the ITA is not applicable to them. This is because the exemption, by virtue of section 13(7), shall not apply to emoluments received by the director of a company.

CLARIFICATION

5 Notwithstanding that fees of directors paid by a non-resident company and attributable to attendance of board meetings in Singapore may, by virtue of the definition of employee in the ITA and the provisions pertaining to gains from employment exercised in Singapore, be subject to Singapore tax, it is hereby clarified that fees paid by non-resident companies with no presence in Singapore to their directors purely in the capacity as directors are sourced in the country where the company is a resident.

6 Pursuant to this clarification, the fees derived by non-resident directors of companies that have no presence in Singapore are not liable to Singapore tax notwithstanding that the directors may, on some occasions, conduct their meetings in Singapore.

7 For avoidance of doubts, the directors' fees derived by resident directors of companies that have no presence in Singapore are also not liable to Singapore tax. However, it applies only to fees attributable to attending board meetings in Singapore and not to all other payments for discharging other duties carried on within Singapore for the non-resident companies.