

IRAS CIRCULAR

OBLIGATIONS OF THE PAYER UNDER SECTIONS 45, 45A, 45B, 45C, 45D, 45E AND 45F OF THE INCOME TAX ACT (ITA)



**INLAND REVENUE
AUTHORITY
OF SINGAPORE**

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Updated on 28 March 2005. Updates are as follows:

- Insertion of sub-paragraphs (g), (j) and (k) in paragraph 1 to reflect obligations of the payer under sections 45C, 45E and 45F of the Income Tax Act, with consequential changes to paragraphs 2 and 4
- Updating of paragraphs 2 and 3 and insertion of footnote 2 to reflect changes in the withholding tax regime which took effect from 1 April 2003

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Introduction

1. The ITA provides that tax has to be deducted from the following payments if they fall within the scope of the following provisions of the Act¹ and are made to non-residents:
 - a) interest, commission, fee or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness [sections 12(6), 45, 45A];
 - b) royalty or other payments for the use of or the right to use any movable property [sections 12(7)(a), 45A];
 - c) payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information or for the rendering of assistance or service in connection with the application or use of such knowledge or information [sections 12(7)(b), 45A];
 - d) payment for the management or assistance in the management of any trade, business or profession [sections 12(7)(c), 45A];
 - e) rent or any other payments under any agreement or arrangement for the use of any movable property [sections 12(7)(d), 45A];
 - f) payment of remuneration to director [section 45B];
 - g) distribution made by a unit trust other than a designated unit trust or an approved CPF unit trust² [section 45C];
 - h) consideration for the disposal of real property [section 45D];
 - i) consideration for the disposal of shares in private companies whose assets are mainly real properties [section 45D];
 - j) withdrawals by Supplementary Retirement Scheme members³ [section 45E]; and
 - k) payment of professional service fee⁴ [section 45F].

¹ There are certain payments which fall outside the scope of sections 12(6) and 12(7) of ITA. These payments are covered in the press statement issued on 21 Dec 77 which is reproduced at Annex 1. For such payments, the payer is not required to deduct tax and account to CIT.

² applicable to distribution made by a unit trust on or after 1 July 1989, except those distribution made by a designated unit trust or an approved CPF unit trust referred to in section 35(12) on or after 28 February 1998

³ applicable to withdrawals made for year of assessment 2002 and subsequent years of assessment

⁴ applicable to payment of professional service fee accruing in or derived from Singapore on or after 3 May 2002

2. Under sections 45, 45A, 45B, 45C, 45D, 45E and 45F, the payer making the payment is required to deduct tax on the payment. He is also required to give a written notice (Form IR 37 or IR37A/B/C, as the case may be) of the deduction of tax and pay the tax so deducted to the Comptroller of Income Tax (CIT) by the 15th day of the month following the date of payment⁵.
3. If the payer fails to make a deduction of tax, it shall become a debt due from him to the Government. Penalties will be imposed on any amount of tax which is required to be deducted but not paid to CIT by the 15th day of the month following the date the payment was made to the non-resident. For the payer who deducts the tax but fails to give notice of such deduction to CIT by the 15th day of the month following the date of the deduction, he shall also be guilty of an offence.
4. This Statement is intended to clarify the obligations of the payer under sections 45, 45A, 45B, 45C, 45D, 45E and 45F of ITA.

Administrative Statement

5. The deduction of tax should be on the gross amount of payment made to non-resident. Where the tax on the payment is not a final tax, and unless permission is sought before such payment is made to the non-resident and agreed to by CIT in writing, the rate of tax to be deducted and accounted to CIT cannot be less than the applicable rate of the gross payment. Depending on the type of payment and tax residence of the non-resident payee, the rate applicable could be 10%, 15%, the prevailing corporate tax or the rates specified under the tax treaty. For payment which is subjected to final withholding tax (e.g. 15% for interest), the deduction of tax is always on the gross amount of payment.
6. In cases of doubt as to whether a payment to the non-resident payee is to be subjected to withholding tax, the payer is advised to seek clarifications from CIT before the payment is due. In the event that there is a dispute with CIT on whether such payment attracts withholding tax, the payer is still required to withhold tax on the payment, pending the resolution of the dispute. Otherwise the payer will be held accountable for any tax due, and at the same time, be levied with penalty charges if tax is not paid to CIT within the stipulated time period.
7. Payers or payees who have any enquiries on this Administrative Statement may call IRAS for clarification.

Inland Revenue Authority of Singapore

⁵ Please refer to our IRAS Circular on "Clarification on Date of Payment of Income for the Purposes of Withholding Tax under Section 45 of the Singapore Income Tax Act and Changes to the Withholding Tax Regime which takes effect from 1 April 2003" on what constitutes date of payment of income for the purpose of complying with the requirement to withhold/deduct tax under section 45 of the ITA.

**PRESS STATEMENT ISSUED BY THE MINISTRY OF FINANCE ON 21ST
DECEMBER 1977
CLARIFICATION OF SUBSECTIONS (6) AND (7) OF SECTION 12 OF THE
INCOME TAX ACT**

1. The Income Tax Amendment Act, 1977 which came into effect on 7th July 1977 introduced certain provisions which have the effect of frustrating tax avoidance schemes in siphoning off Singapore profits, particularly between associated companies in Singapore and outside Singapore. However, some of these provisions have been given more than one possible interpretation, thus giving rise to doubt on the scope and amount of payments to non-residents subject to tax. For the purposes of clarification and ease of administration, where the following services are performed outside Singapore by persons outside Singapore for or on behalf of residents or permanent establishments in Singapore, or even between associated companies, and such transactions are at arm's length and not with the intent of siphoning off Singapore income, the Commissioner of Inland Revenue has given the following rulings:-

- (a) Commission, fees or any other payments in connection with any arrangement, guarantee, management or service relating to any loan or indebtedness - section 12(6)(a) of the Income Tax Act

Where the arrangement, management, guarantee or service is performed outside Singapore, the payments for such arrangement, guarantee, management or service are hereby treated as not covered by the provisions of section 12(6)(a).

- (b) Any payment for rendering of assistance or service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information - section 12(7)(b) of the Income Tax Act

Where the assistance or service is performed outside Singapore, the payment for such assistance or service is hereby treated as not covered by the provisions of section 12(7)(b). This does not refer to royalty which has always been subject to tax even before the 1977 Income Tax Amendment.

- (c) Any payment for the management or assistance in the management of any trade, business or profession - section 12(7)(c) of the Income Tax Act

Reimbursement or allocation of administrative expenses incurred by head office outside Singapore and claimed by a branch in Singapore is governed by the provisions of section 14 as before. This also applies to reimbursement or allocation of expenses between associated companies. Both are not affected by the provisions of section 12(7)(c). Payments to persons outside Singapore not associated to the payers in Singapore are hereby treated as not covered by the provisions of section 12(7)(c).

With the above rulings, the practice of treating these payments vis-a-vis the recipients outside Singapore remains the same as before the 1977 Amendments.