

# **IRAS CIRCULAR**

**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  
(Revised edition)**



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# IRAS CIRCULAR

## 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

### INTRODUCTION

- 1 Currently, section 45 of the Singapore Income Tax Act (SITA) provides that where a person is liable to pay to another person not known to him to be resident in Singapore (hereinafter referred to as “non-resident person”) any interest which is chargeable to tax under the SITA, the person making the payment (hereinafter referred to as “payer”) shall deduct therefrom tax at the appropriate rate on every dollar of the interest and shall immediately give notice of the deduction of tax in writing and pay to the Comptroller of Income Tax (CIT) the amount so deducted<sup>1</sup>.
- 2 In a case where the interest liable to be paid is not actually paid over to the non-resident 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 non-resident person”, section 45(8)(b) of the SITA deems the interest as having been paid to the non-resident person on the date on which the interest is reinvested, accumulated or capitalised etc.
- 3 The withholding tax requirement is also applicable to the payment of royalties, management fees, director’s remuneration, professional and other service fees etc. to a non-resident person, as provided under sections 45A to 45F of the SITA.
- 4 Pursuant to section 45(8)(b) of the SITA, withholding tax must be accounted for at the earliest of the following dates:
  - (a) when the liability to pay the income arises (i.e. the income is due and payable) in accordance with the terms of the agreement/contract. In the absence of an agreement/contract, the date of invoice (further explained in paragraphs 7 to 9 below) is regarded as the deemed date of payment;
  - (b) when the income is credited to the account of the non-resident person (or reinvested, accumulated, capitalised or carried to any reserve or any other account however designated, or otherwise dealt with on his behalf); and
  - (c) when actual payment of the income is made.
- 5 The purpose of this Circular is to:

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<sup>1</sup> Please refer to paragraphs 10 and 13 which spells out the time within which the tax deducted has to be paid to CIT as provided under section 45 of the SITA.

- (i) clarify what constitutes date of payment of income for the purpose of complying with the requirement to withhold/deduct tax under section 45 of the SITA, as well as under any other provisions where similar requirement applies, where the payment of income (other than director's fees<sup>2</sup>) is made or deemed to be made to a non-resident person; and
- (ii) provide details on the changes to the filing and payment procedure as well as the penalties applicable to the new regime for withholding tax under section 45 of the SITA (to be amended), which takes effect from 1 April 2003.

## **CLARIFICATION ON WHAT CONSTITUTES DATE OF PAYMENT OF INCOME FOR THE PURPOSE OF COMPLYING WITH WITHHOLDING TAX REQUIREMENT**

### **Date of payment of income where there is a contract or agreement**

- 6 Where the date on which income accrues to a non-resident person is stipulated under any written contract or agreement, the date of payment of the income shall be the date of accrual as stipulated therein. For example, if the terms of the agreement provide that royalties at 5% of sales shall accrue to the non-resident person at the end of each quarter, the date of payment of the royalties for the purposes of section 45A of SITA is deemed to be the last day of each quarter.

### **Date of payment of income where demand for payment is in the form of invoice**

- 7 Where the date of payment of the income is not spelt out in any written contract or agreement, but instead the demand for payment of the income is by way of an invoice from the non-resident person, the date of payment is deemed to be the date as printed on the invoice.
- 8 In a case where the local payer of the income is given an extension of time by the non-resident person to make the payment, the deemed date of payment shall remain as the date printed on the invoice. This is because the payer's liability to pay arises on the date of the invoice and any credit terms extended to the payer are merely an arrangement made between the payer and payee to defer actual payment.
- 9 To illustrate, suppose a non-resident person issues an invoice dated 1 March to a local payer for management fees in respect of services rendered by the former, and the local payer receives the invoice on 5 March. Although a 30-day

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<sup>2</sup> For director's fees, such fees accrue to directors on the date the director's fees are voted and approved at the company's Annual General Meeting. Please refer to IRAS Compass Interpretation and Practice Note No. 9 of 1993 (or our e-Tax Guide on "New Tax Treatment of Director's Fees and Bonuses from Employment, 1993/IT/11) for further details. As such, this date is also the date of payment of fees to non-resident directors for the purpose of complying with withholding tax requirement under section 45B of the SITA.

credit term is allowed to the payer and that the local payer makes actual payment on 15 March, the date as printed on the invoice (i.e. 1 March) shall be taken as the deemed date of payment of the fees.

### **WITHHOLDING TAX REQUIREMENT PRIOR TO 1 APRIL 2003**

- 10 Section 45 provides that the amount of tax, which is required to be deducted from the interest, must be paid to CIT within 10 days after the date of payment<sup>3</sup> of interest to a non-resident person. A late payment penalty of 5% will be imposed<sup>4</sup> on the tax withheld if it is not received by CIT within 10 days after the date of payment of interest to the non-resident person. If the tax withheld is not paid over to CIT after 30 days from the date of payment of interest to the non-resident person, an additional penalty of 1% will be imposed<sup>5</sup> for each completed month that the tax withheld remains unpaid, subject to a maximum of 15%.
- 11 The above section further provides that a notice of the tax withheld must be given to CIT within 10 days after the tax is withheld. Failure to give such a notice to CIT within the stipulated period is an offence<sup>6</sup>.
- 12 As mentioned in paragraph 3 above, the withholding tax requirement is also applicable to the payment of royalties, management fees, director's remuneration, professional and other service fees, etc to a non-resident person, as provided under sections 45A to 45F of the SITA.

### **CHANGES TO THE WITHHOLDING TAX REGIME WHICH TAKES EFFECT FROM 1 APRIL 2003**

#### **The changes and effective date**

- 13 With effect from 1 April 2003, payers are required to notify and pay the tax withheld to CIT by the 15<sup>th</sup> of the month following the date of payment<sup>3</sup> of the income to a non-resident person. In line with this change, late payment penalties will be imposed only if the tax withheld is not made to CIT by the same date.
- 14 The changes are effective for all payments of income with date of payment<sup>3</sup> from 1 April 2003 onwards.
- 15 The changes are made following feedback from the business community.

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<sup>3</sup> Please refer to paragraphs 6 to 9 of this Circular for clarification on what constitutes the date of payment of income for the purpose of complying with withholding tax requirement.

<sup>4</sup> under section 45(4)(a) of the SITA

<sup>5</sup> under section 45(4)(b) of the SITA

<sup>6</sup> as provided under section 45(5) of the SITA

## **New Filing And Payment Procedures**

- 16 With the change, payers are required to notify and pay the tax withheld to CIT by the 15<sup>th</sup> of the month following the date of payment<sup>3</sup> of income to the non-resident person<sup>7</sup>. For example, if the payer is liable to make an interest payment to the non-resident person on 5 April 2003, he has to notify CIT and remit the tax withheld by 15 May 2003.
- 17 For the purpose of notifying CIT of the tax withheld, payers are still required to complete the relevant Form IR37/A/B/C.

## **Penalties Applicable to the New Regime for Withholding Tax**

- 18 Where payment of the tax withheld is not received by the due date, a 5% late payment penalty will be imposed<sup>8</sup>. The due date for paying the tax withheld to CIT under the new withholding tax regime would be on the 15<sup>th</sup> of the month following the date of payment<sup>3</sup> of the income to the non-resident person. Following the example in paragraph 16, if the payer only remits the tax withheld to CIT on 17 May 2003 i.e. 2 days after the due date of 15 May 2003 for the interest payment made on 5 April 2003, a 5% late payment penalty will be imposed.
- 19 Where payment of the tax withheld is not received within 30 days after the due date, an additional 1% penalty will be imposed<sup>9</sup> for each completed month that the tax remains unpaid, subject to maximum of 15%. Based on the same example in paragraph 16, if the local payer remits the tax withheld on 18 July 2003, which is 64 days (30 days + one completed month) after the due date of 15 May 2003, a 5% late payment penalty and a 1% additional penalty will be imposed.

## **ENQUIRIES**

- 20 For any general enquiries or clarification on this Circular, please call 1800-3568622 (Corporate) or 1800-3568300 (Individual). For any enquiries on

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<sup>7</sup> For payments made to a non-resident professional (NRP), a concession is given to allow consolidation of payments made to the same NRP in respect of the same engagement if the interval between the first date of payment and the last date of payment does not exceed 60 days. For more details, please refer to the IRAS Circular on "Tax on Gross Income Derived from Singapore by Non-resident Professionals – Clarification on Option to be Taxed on Net Income and Obligations of Payer to Withhold Tax".

<sup>8</sup> under section 45(4)(a) of the SITA

<sup>9</sup> under section 45(4)(b) of the SITA

payment and filing procedures, please call [6351 2784](tel:63512784) / [6351 2785](tel:63512785) / [6351 2786](tel:63512786) / [6351 2787](tel:63512787).

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