

IRAS CIRCULAR

**TAX ON GROSS INCOME DERIVED FROM
SINGAPORE BY NON-RESIDENT PROFESSIONALS
- CLARIFICATION ON OPTION TO BE TAXED ON
NET INCOME AND OBLIGATIONS OF LOCAL
PAYER TO WITHHOLD TAX**



**INLAND REVENUE
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TAX ON GROSS INCOME DERIVED FROM SINGAPORE BY NON-RESIDENT PROFESSIONALS - CLARIFICATION ON OPTION TO BE TAXED ON NET INCOME AND OBLIGATIONS OF LOCAL PAYER TO WITHHOLD TAX

INTRODUCTION

- 1 Prior to the Budget announcement on 3 May 2002, a non-resident professional (NRP¹) was subject to tax at the rate of 24.5% for Year of Assessment (YA) 2002 (22% from YA 2003 onwards) on his income after allowable expenses.
- 2 To reduce the administrative requirements and compliance costs for NRPs who generally do not need to incur much expenditure in order to render services in Singapore, it was announced in the 2002 Budget that with effect from 3 May 2002, NRPs would be subject to a final withholding tax at 15% of their gross income² (inclusive of expenses³ borne by the local payer) derived in respect of services performed in Singapore, i.e. income from their profession or vocation.
- 3 In recognition of the fact that NRPs may have different expense to income ratios, the Ministry of Finance has decided to allow NRPs to opt to be taxed at 22% of net income instead of 15% of gross income⁴.
- 4 The above tax treatment also applies to NRPs who operate through a foreign firm⁵. This means that services rendered in Singapore through a foreign firm will be subject to a final withholding tax at the rate of 15% of its gross income regardless of the residence status of the individual partners, unless the foreign firm exercises the option to be taxed at 22% of net income.

¹ For this purpose, a NRP is a non-resident individual who, under a contract for service, exercises his profession or vocation in Singapore for less than 183 days in a calendar year.

² For example, if a local payer engages a NRP under a contract for service to perform certain services in Singapore and the local payer agrees to bear all lodging and traveling expenses (say, \$50,000) of the NRP in addition to paying him a service fee of \$100,000, the expenses borne by the local payer also constitute income of the NRP. In this example, the gross income payable by the local payer to the NRP amounts to \$150,000 (i.e. \$100,000 + \$50,000).

³ Prior to 3 May 2002, an administration concession was applicable to NRPs in respect of cost of accommodation and airfare borne by local payers who contracted for the service. Under the concession, the accommodation provided to a NRP for 60 days or less in a calendar year and airfare borne by a local payer would not be regarded as part of the taxable income of the NRP. This concession will continue to apply to those who elect to be taxed at 22% of net income. The concession however no longer applies in cases where a NRP is subject to the final withholding tax at 15% of gross income.

⁴ The term "gross income" used in this Circular is explained in paragraph 2 of this Circular and the determination of which is illustrated in footnote 2.

⁵ Under section 43(3C) of the Singapore Income Tax Act (as amended in 2002), a foreign firm means an unincorporated body comprising 2 or more persons who have entered into partnership with one another with a view to carrying on business for profit and whose principal place of business is outside Singapore.

5 This Circular seeks to:

- (a) clarify the application of the option that is made available to a NRP/foreign firm including the obligations of the local payer to withhold tax;
- (b) set out the procedure that the NRP/foreign firm and his local payer must comply with in order for the NRP/foreign firm to avail himself of the option;
- (c) provide details on certain administrative concessions put in place to facilitate the NRP/foreign firm in making the option; and
- (d) explain the consequential amendments made to the tax treatment of NRPs/foreign firms as a result of the new withholding tax regime effective from 1 April 2003 (elaborated in paragraphs 12 to 22).

TAX TREATMENT

Option to be taxed on net income under Section 43(3B) of the Singapore Income Tax Act

- 6 As mentioned in paragraph 3, in recognition that some NRPs/foreign firms may have different expense to income ratios, an option is provided under section 43(3B) of the Singapore Income Tax Act ("SITA") to allow NRPs/foreign firms 30 days from the date on which income from their profession or vocation exercised in Singapore accrues to them (referred hereinafter as "date of payment of income")⁶, to request for such income to be assessed at 22% of net income.
- 7 Notwithstanding the availability of the above-mentioned option, the local payer is required to withhold tax at 15% of gross income and remit the tax withheld together with the Form IR37C (available on IRAS website: www.iras.gov.sg) duly completed to Comptroller of Income Tax ("CIT") in accordance with the provisions stipulated under section 45F of the SITA which applies the same provisions as section 45 to such payments. Where the option is exercised by a NRP/foreign firm⁷, the tax at 15% of gross income that has been remitted to the

⁶ The term "date of payment of income", pursuant to section 45(8) of the SITA, refers to the date on which the person who has contracted for the service is liable to pay the fees to the person who renders the service (or the date on which the income accrues to the person who renders the service) if this date precedes the actual date of payment of income. For further clarification on what constitutes the date of payment of income under different situations, please refer to paragraphs 6 to 9 of the 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" issued on 31 March 2003.

⁷ The option is to be exercised by the NRP/foreign firm via a revised Form IR37C, which the local payer is to submit to CIT.

CIT shall be available to the NRP/foreign firm for set-off against his tax payable at 22% of net income.

- 8 The option once exercised, is irrevocable.
- 9 If the NRP/foreign firm does not exercise such an option within 30 days from the date of payment of income, the withholding tax at 15% of gross income will be the final tax.

ADMINISTRATIVE CONCESSION FOR OPTION TO BE EXERCISED UPFRONT

- 10 There has been feedback that treating the requirement for a local payer to withhold tax at 15% of gross income separately from a NRP/foreign firm's option to be taxed at 22% of net income causes additional administrative work in cases where the option is exercised. As such, it has been decided that as an administrative concession, notwithstanding paragraph 6 above, the NRP/foreign firm can exercise the option upfront (i.e. before or at the same time as the tax is withheld and remitted to CIT). When such an upfront option is made, the local payer need not withhold tax at 15% of gross income but instead, he is to withhold tax at 22% of net income and remit such tax withheld to CIT in accordance with section 45 of the SITA.
- 11 In order to avail himself of the option upfront, the NRP/foreign firm would have to complete and sign section IV of Form IR37C. This form is to be submitted by the local payer to CIT together with the tax withheld at 22% of net income within the timeframe stipulated under section 45 of the SITA.

CHANGES MADE NECESSARY BY THE NEW WITHHOLDING TAX REGIME EFFECTIVE FROM 1 APRIL 2003

Due date for exercise of option with effect from 1 April 2003

- 12 With effect from 1 April 2003, a local payer liable to pay to a non-resident⁸ income subject to withholding tax is required to notify and pay the tax withheld to CIT by the 15th of the month following the date of payment of income. Arising from this change, a local payer will have between 15 and 45 days to remit the tax withheld to CIT, depending on the date of payment of income to a NRP/foreign firm. Consequently, section 43(3B) will be amended to allow the NRP/foreign firm up to 45 days from the date of payment of income to exercise the option to be taxed at 22% of net income.
- 13 With the above tax change, NRPs/foreign firms who wish to avail themselves of the option upfront will still be allowed to exercise the option upfront by completing and signing on section IV of Form IR37C. The local payer will then

⁸ Please refer to the 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" issued on 31 March 2003 for details on how to determine the date of payment of income under different situations, where applicable.

submit the form by the 15th day of the month following the date of payment of income.

- 14 If the NRP/foreign firm does not exercise the option upfront by the time the local payer pays the tax withheld to CIT, the local payer should withhold tax at 15% of the gross income. The NRP/foreign firm can subsequently exercise the option to be taxed at 22% on the net income by submitting a revised Form IR37C through the local payer, provided the option is exercised within 45 days from the date of payment of income to the NRP. In such a case, if the tax at 22% of the net income were less than that previously withheld at 15% of gross income, the excess tax withheld would be refunded.
- 15 Any option made by a NRP/foreign firm to be taxed at 22% of net income after the 45 days timeframe will not be accepted by CIT.
- 16 To illustrate, under the terms of a contract for service, local payer, Mr A, has to pay \$100,000 to NRP, Mr B, on 30.4.03 for service Mr B rendered in Singapore to Mr A. Mr A will have to withhold and remit tax to CIT by 15.5.03 (i.e. by the 15th day of the month following the date of payment of income). If Mr B has not made the option to be taxed at 22% of net income (i.e. \$100,000 less allowable expenses), Mr A will have to withhold tax at 15% of \$100,000 (i.e. \$15,000) and remit the tax to CIT by 15.5.03.
- 17 If Mr B in the above example subsequently makes the option between 16.5.03 and 14.6.03 (i.e. after 15.5.03 but within 45 days from 30.4.03) by submitting a revised Form IR37C through the payer, CIT will refund him any tax withheld in excess of the tax payable at 22% of net income. Any such option, i.e. to tax the NRP based on 22% of service income less allowable expenses, received by CIT after 14.6.03 (i.e. after 45 days from the date of payment of income on 30.4.03) will not be accepted by CIT.
- 18 A flowchart summarizing the tax treatment for NRPs/foreign firms is as attached in Annex A.

Multiple payments for a single engagement

- 19 Where a local payer makes multiple or a series of payments to the same NRP/foreign firm in respect of the same engagement, the local payer will, as an administrative concession, be allowed to consolidate the payments and remit the tax on the consolidated amount of gross income to CIT by the 15th day of the month following the last date of payment of income, if the conditions set out in paragraph 20 are met.
- 20 This administrative concession applies only if the interval between the first and the last date of payment of income to the NRP/foreign firm does not exceed 60 days. In other words, only sums liable to be paid within 60 days from the first date of payment of income to the same NRP/foreign firm in respect of the same engagement will be consolidated and tax withheld on the consolidated amount will have to be remitted to CIT by the 15th day of the month following the last

date of payment of income. Payments for the same engagement that are made subsequent to this 60-day period from the first date of payment of income for that engagement are subject to withholding tax requirements as set out in paragraphs 12 to 18 above.

- 21 For the purpose of the concession in paragraphs 19 and 20, a NRP/foreign firm who wishes to elect for the option to be taxed at 22% of net income has to do so upfront, i.e. by the 15th day of the month following the date of last payment within 60 days from the date of the first payment.
- 22 As an illustration of this administrative concession, a local educational institution engages a NRP to conduct guest lectures from 1.4.03 to 15.5.03. It pays the NRP a cash allowance amounting to \$400 on 1.4.03, accommodation amounting to \$500 on 17.5.03 and airfare of \$1,000 on 1.7.03. The amount of withholding tax to be remitted to CIT and due dates will be as follows:

If NRP is taxed at 15% of gross income (i.e. no option is exercised to be taxed at 22% of net income)	If NRP exercises option upfront to be taxed at 22% of net income
<ul style="list-style-type: none"> • Withholding tax on cash allowance and accommodation = 15% x (\$400+\$500) to be remitted to CIT by 15.6.03⁹; • Withholding tax on airfare = 15% x \$1,000 to be remitted to CIT by 15.8.03¹⁰. 	<ul style="list-style-type: none"> • Withholding tax on cash allowance and accommodation = 22% x \$400¹¹ to be remitted to CIT by 15.6.03¹²; • Withholding tax on airfare = nil¹¹

⁹ i.e. 15th day of the month following the last date of payment of income, since the interval between the first date of payment of income i.e. \$400 on 1.4.03, and the last date of payment of income i.e. \$500 on 17.5.03, is less than 60 days.

¹⁰ i.e. 15th day of the month following the date of payment of income. This amount cannot be consolidated with the earlier amount payable in respect of the same engagement for withholding tax purposes as the amount is payable more than 60 days after the first date of payment of income on 1.4.03.

¹¹ Please refer to footnote 3 on the administrative concession in respect of accommodation provided to an NRP for 60 days or less in a calendar year and airfare borne by a local payer. This administrative concession is available to those NRPs who elect to be taxed at 22% of net income.

¹² i.e. 15th day of the month following the last date of payment of income, since the interval between the first date of payment of income i.e. \$400 on 1.4.03, and the last date of payment of income i.e. \$500 on 17.5.03, is less than 60 days.

ENQUIRIES

22 For any clarification on this Circular, please call 1800-3568622 (Corporate) or 1800-3568300 (Individual). For any enquiry on payment and filing procedures, please call 63512788/ 63512789/ 63513809.

Inland Revenue Authority of Singapore

Flowchart Summarizing the Tax Treatment for NRPs/Foreign Firms

