

GUIDELINES ON WITHHOLDING TAX

What is Withholding Tax?

- Tax on income of a non-resident on Brunei-sourced income;
- The law requires any person who makes payment of a specified nature to a non-resident to withhold a percentage of that payment and pay the amount withheld to the Collector of Income Tax;
- The amount withheld is called the withholding tax.

What kind of payments is subject to Withholding Tax?

- Interest, commission, fee in connection with any loan or indebtedness;
- Royalty or other payments for the use of or the right to use any movable property;
- 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;
- Management fee;
- Rent or other payments for the use of any movable property;
- Technical assistance and Service Fee;
- Non-resident Directors' remuneration.

Interest and other loan payments

- Withholding tax on interest in relation to loan has been effective ever since the enactment of the Income Tax Act on 31st December 1949 at the rate of 20%.
- Under the new Income Tax Act (Amendment) (No.2) Order, 2008, withholding tax rate is changed to 15%.

Technical Assistance and Service Fees

- S. 35(6) provides "The incomes excluded under subsections (2) (b) and (3) are any payment to a person not resident in Brunei Darussalam for the rendering of assistance or service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information."
- Where payment is made to a non-resident company for the installation of equipment, technical support services, training, consultancy or other services provided by the non-resident company, withholding tax is applicable on the service fees **attributable to work done in Brunei**.
- If the payer pays for monthly allowance of the non-resident company's employees who are sent to Brunei to perform the services, withholding tax is applicable on the allowance because the monthly allowance is actually additional service fees paid to the non-resident company. However payment of reimbursement such as accommodation, meals and transportation expenses at the actual cost incurred, will not be subjected to withholding tax.

- Withholding tax only applies to payment for the use or the right to use the know how. It does not apply to payments for the alienation of the know-how.
- Technical assistance performed outside Brunei are not deemed to be derived from Brunei, provided that the transactions are at arm's length.
- If the company is a resident of a tax treaty country, the Avoidance of Double Taxation Agreement (DTA) may provide for relief from double taxation, depending on the provision of the DTA.

Management, Consultancy Fee

- Withholding tax is not applicable to:
 - reimbursement (at cost) between head office and branches;
 - where the amounts may reasonably be attributed to a business carried on by a non-resident through a **permanent establishment** in Brunei;
- Withholding tax is not applicable to reimbursement (without profit element) between head office and branches.
- If consultancy services rendered outside Brunei for the operations or activities outside Brunei, the fees will not be subjected to withholding tax. However if the services were rendered partly inside Brunei, only the payment attributable to the services rendered in Brunei is subject to withholding tax;
- However, if the non-resident company provides the services via electronic means overseas (e.g. internet presentation, email and telephone) without sending staff to Brunei, the services are rendered outside Brunei and withholding tax is not applicable.
- Payments for services provided by professionals which are not related to provision of services for application or use of scientific, technical, industrial or commercial knowledge or information, such as engineers, geologists, architects, lawyers, accountants, do not constitute royalties or technical assistance, but would be classified as business profits.

Withholding Tax Rate

Tax must be withheld from payments made to a non-resident person on or after 1 January 2008 at the following rates:

Nature of payment	Section	Withholding tax rate
Interest, commission, fee or other payment in connection with any loan or indebtedness	35(2)	15%
Royalties or other lump sum payments for the use of movable properties	35(3)	10%
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	35(3)	10%
Rendering Technical assistance and Service in connection with the application or use of such knowledge or information	35(6)	20%
Management Fees	37A & 37 (1)	20%
Rent or other payments for the use of movable property	35(2)	15%
Non-resident Directors' Remuneration	37B & 37 (1)	20%

Why Withholding Tax?

- Non-resident companies/persons derived income from Brunei;
- To facilitate collection of income tax from non-resident on their Brunei-sourced income since the payers are within the jurisdiction whilst the payees may be outside the jurisdiction;
- In most countries, companies/persons are required to declare all of his income from all sources including overseas. Income/corporate tax will be assessed on all of the income and therefore income which are not taxed at the source country will be tax at the host country;
- In some countries, tax relief is available on income which tax has been paid at the source country;

Who are non-resident?

- Under the Income Tax Act “resident in Brunei Darussalam” means:
 - Individual - an individual who resides in Brunei Darussalam except for such temporary absence as to the Collector may seem reasonable and not inconsistent with the claim of such individual to be resident in Brunei Darussalam, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Brunei Darussalam for 183 days or more during the year preceding the year of assessment;
 - Company – means a company or body of persons the control and management of whose business is exercised in Brunei Darussalam;

Withholding Tax Implication to the Non-Resident:

- Payments of a specified nature made to them will be deducted at source by resident payers;
- Tax withheld is deemed to be paid by the non-resident persons/companies;
- Tax withheld can be declared by the non-resident persons/companies for the purpose of claiming any tax relief available under their domestic tax law;
- The non-resident company may also opt to submit tax return to Brunei on Brunei-source income if it wishes to claim for the expenses incurred wholly and exclusively in the production of the sourced income. In such case, the company is required to forward the certified accounts and tax computation for consideration. The tax rate applicable shall be the corporate tax rate. When the net income and tax have been determined, any tax withheld in excess of the net income will be refunded.

Tax Relief on Withholding Tax:

- **Double Taxation Agreement**
 - For residents of a treaty country, withholding tax rates are subject to the rates as specified in the specific articles in the Double Taxation Agreement;

TYPE OF PAYMENT	NAME OF COUNTRY HAVING DTA WITH BRUNEI (RATIFIED) AND THE AGREED RATES			
	UK	INDONESIA	CHINA	SINGAPORE
Dividends	15%	15%	5%	10%
Royalties	Exempt	15%	10%	10%

TYPE OF PAYMENT	NAME OF COUNTRY HAVING DTA WITH BRUNEI (RATIFIED) AND THE AGREED RATES			
	UK	INDONESIA	CHINA	SINGAPORE
Interest	Exempt	15%	10%	Financial institutions - 5%; Others - 10%

- That person/company may claim tax relief/credit on the tax paid in Brunei that will proportionately reduce the tax payable on income received from Brunei.
- **Commonwealth Tax Relief (S.40 of the Income Tax Act)**
 - Where the foreign tax rate (from Commonwealth countries) does not exceed 50 per cent of the Brunei rate, relief is granted in full;
 - In all other cases, the credit is capped at half the Brunei tax rate;
- **Investment Incentive Order, 2001**
 - Where exemption from withholding tax is applied under Investment Incentive Order, 2001, companies may submit their application to the Ministry of Industry and Primary Resources for consideration.