

## Singapore Withholding Tax

Generally, corporates and individuals who are tax residents in Singapore are subject to Singapore tax. Corporates and individuals who are not tax residents in Singapore (“non-residents”) may be subject to Singapore tax as well, via the withholding tax (“WHT”) system, by virtue of them having income of a Singapore source. In making payment of a specified nature to the non-resident, the onus lies with the Singapore-based payer to withhold a percentage of the amount and pay this over to the Inland Revenue Authority of Singapore (“IRAS”). It is not uncommon to realise in hindsight that the duty to withhold tax has been overlooked, non-compliance may lead to penalties and / or result in enforcement actions being taken.

### What is Withholding Tax

The rationale behind WHT is that certain payments are made to a non-resident who does not have tax presence in Singapore but is receiving income arising in Singapore. A non-resident does not file tax returns in Singapore, therefore the WHT mechanism attempts to deduct tax at source in Singapore on such payments to the non-resident. The payer is responsible for the filing and payment of WHT though it relates to the payee's tax liability, this is to be distinguished from the filing of corporate tax returns in Singapore.

### Payments Subject to Withholding Tax

Not all payments are subject to WHT, salaries and dividends, for example, do not carry WHT.

Essentially, only payments to non-residents are caught within the ambit of WHT and such payments (which are income to the non-residents) must be derived from a Singapore source or from services performed in Singapore by the non-residents. There are specific types of payments which attract WHT, these include interest and commissions, royalty and the right to use intellectual property, management fees, services rendered, rent and director's fees.

The legislation also deems certain income to be Singapore-sourced for WHT purposes. For instance, interest income is regarded as sourced in Singapore where it is borne directly, or indirectly, by a Singapore resident or deductible against any income accruing in or derived from Singapore. Income arising from loans where the funds are brought into or used in Singapore is deemed sourced in Singapore.

WHT may not apply by way of concession or payments being excluded from the scope of WHT and the deeming provisions. Interest, commission, royalty and management fee payments to Singapore branches of non-resident companies are waived from WHT under the administrative concession to alleviate taxpayers' compliance burden. The Singapore branches of non-resident companies will still be subject to tax on these payments as declared in their tax returns.

## Withholding Tax Rates

Management fee, technical assistance fee and service fee income are to be withheld at the prevailing corporate tax rate of 17%. A 15% WHT rate usually applies to interest and rent or other payments for the use of moveable properties, 10% for royalties and payments for the use of or the right to use scientific, technical, industrial, or commercial knowledge or information. Broadly, fees to a non-resident director are to be withheld at 22%. Where the WHT rate is not considered final tax, expenses incurred to earn the income may be claimable by the non-resident.

Singapore has concluded comprehensive tax treaties with more than 90 countries. Depending on the jurisdiction where the payee is tax resident, the relevant tax treaty may provide for reduced WHT rates, a Certificate of Residence is to be obtained by the non-resident from its local tax authority to claim this tax benefit.

At first glance, some payments may fall into the respective Articles (e.g. royalties, interest) in the tax treaties. However, the classification of a payment may not coincide with the definitions spelled out in the tax treaty, exact facts of the case will have to be examined in order to ascertain the appropriate rate of WHT.

## Compliance Mechanism

The Singapore-based payer has up to 15<sup>th</sup> of the second month following the “payment date” to file the WHT form electronically and pay the WHT to the IRAS, failing which, penalties will be imposed. “Payment” does not take its ordinary meaning in the context of WHT and can arise from a contract, invoice or accrual, for example.

“Payment date” is considered to be the earliest of when the payment is due and payable, when the payment is credited to the account of the non-resident or the actual date of payment. Therefore, a WHT charge is payable to the IRAS in Singapore on an accounting entry for the accrual of specific payment (e.g. interest), even where payment is not subsequently made.

An immediate 5% late penalty will be levied if the WHT is not filed with or paid to the IRAS by the due date. A further 1% additional penalty is imposed for each completed month that the WHT remains unpaid, up to a maximum of 15%.

It should be noted that the penalties are computed with reference to the date the payer is liable to file and pay the WHT. Hence, it is crucial to determine “payment date” accurately, as evident above, this can be well ahead of an actual payment being made.

An application can be made under the Voluntary Disclosure Programme for reduced penalties should it be discovered that WHT requirements have not been met. The outcome of the application is subject to the review of IRAS on a case-by-case basis.

## Common Scenarios

Interest expense on intercompany loan has been accrued in the Singapore borrower’s books on a quarterly basis, the loan agreement with the non-resident lender states that interest is due and payable at the end of each calendar year. There has been no actual payment of the interest to the lender due to financial circumstances of the borrower. Should the Singapore borrower withhold tax and when should this be?

A Singapore company has engaged the services of an IT consultancy firm based overseas for a project, which involves a series of advice being provided remotely from outside of Singapore, thereafter the IT firm has deployed staff to Singapore to render the remaining services for a few weeks. How will Singapore WHT apply?

A director sitting on the board of a Singapore incorporated and resident company resides overseas and receives director’s fees. Since he is not resident in Singapore, is there any Singapore WHT and at what point does the payer company have to withhold tax?

## How Rawlinson & Hunter can help

Rawlinson & Hunter (Singapore) Pte Ltd provides a suite of consultancy and support services which include accounting, tax, directorships and corporate services and can assist in navigating the complexities of WHT and ensuring WHT requirements are being met. We also provide advice around structuring, including any Singapore WHT implications arising, and provide ongoing compliance to our clients.

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