



**REVENUE DIVISION
MINISTRY OF FINANCE
BRUNEI DARUSSALAM**

INCOME TAX PUBLIC RULING

WITHOLDING OF TAX ON SPECIFIED NATURE OF PAYMENTS

**PR NO. 04/2017
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1.0 INTRODUCTION

The objective of this Public Ruling (PR) is to explain:-

- (i) The specified nature of payment that are chargeable to tax;
- (ii) The applicable tax rates; and
- (iii) The method of payment of tax from these specified nature of income.

2.0 RELEVANT PROVISIONS OF THE LAW

2.1 This PR takes into account laws which are in force as at the date this PR is published.

2.2 The related provisions are sections 2, 9(4), 9(5), 35 (2), 35 (2A), 35(3), 35(6), 37, 37(A), 37(B), 41 and 77 of the Income Tax Act (ITA).

3.0 INTERPRETATION

The words used in this Ruling have the following meanings:

- 3.1 "company" means a company incorporated or registered under companies Act (Chapter 39) or any law in force elsewhere.
- 3.2 "credited" in relation to an amount means more than a mere journal entry or an accrual of the liability in the accounts of the payer and an amount is considered as having been credited if the amount is available to or for the benefit of the non-resident payee.
- 3.3 "date of credited" refers to the date of when the amount is paid or the date the amount is credited in the bank account of the recipient or the date of a contra entry, whichever is earlier.
- 3.4 "permanent establishment" means a fixed place where a business is wholly or partly carried on including –

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a warehouse;
- (f) a workshop;
- (g) a farm or plantation;
- (h) a mine, oil well, quarry or other place of extraction of natural resources;
- (i) a building or work site or a construction, installation or assembly project,

and without prejudice to the generality of the foregoing, a person shall be deemed to have a permanent establishment in Brunei Darussalam if that person —

- (i) carries on supervisory activities in connection with a building or work site or a construction, installation or assembly project; or
- (ii) has another person acting on that person's behalf in Brunei Darussalam who-
 - (A) has and habitually exercises an authority to conclude contracts;
 - (B) maintains a stock of goods or merchandise for the purpose of delivery on behalf of that person; or
 - (C) habitually secures orders wholly or almost wholly for that person or for such other enterprises as are controlled by that person.

3.5 "person" includes a company and a body of persons.

3.6 "body of persons" means any body politic, corporate or collegiate, fraternity, fellowship, or society of persons whether corporate or not corporate.

3.7 "resident in Brunei Darussalam" —

- (a) in relation to an individual, means a person who, in the year preceding the year of assessment, resides in Brunei Darussalam except for such temporary absences therefrom as to the Collector may consider reasonable and not inconsistent with a claim by such person 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;

(b) in relation to a company or a body of persons, means a company or a body of persons the control and management of whose business is exercised in Brunei Darussalam.

3.8 "non-resident" means a person not known to be a resident in Brunei Darussalam.

4.0 NATURE OF PAYMENTS THAT ARE SUBJECTED TO WITHOLDING OF TAX

4.1 Any resident company or permanent establishment who makes payment of a specified nature to a non-resident companies (including non-resident directors), a certain percentage of the payment must be withheld and paid to the Collector of Income Tax (CIT). The percentage amount withheld is withholding of tax.

4.2 Initially, withholding of tax was provided on loan interest paid to non-residents only. Effective from 1st January 2008, scope of withholding tax have been expanded to include other payment other than interest.

4.3 The specified nature of payments subjected to withholding of tax are:

- (a) Interest, commission, fee or other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee or service relating to any loan or indebtedness;
- (b) royalties or other lump sum payments for the use of movable property;
- (c) use of or the right to use scientific, technical, industrial or commercial knowledge or information;
- (d) rendering of assistance or services in connection with the application or use of scientific, technical, industrial or commercial knowledge or information;
- (e) management or assistance in the management of any trade, business or profession;

- (f) rent or other payments under any agreement or arrangement for the use of any movable property; and
- (g) non-resident director's remuneration.

5.0 TAX RATE

5.1 For specified nature of payments, tax are to be withheld from the non-residents at the following rates:

Nature of Payment	Section 37 and 37A read with	Tax Rate	Tax Rate Effective 1 January 2016)	Tax Rate (Effective 1 April 2017)
Interest, commission, fee or other payment in connection with any loan or indebtedness.	9(4) and 35(2)	15%	No change	2.5%
Royalties, lump sum payments or otherwise for the use of movable properties.	9(5)(a) and 35(3)	10%	No change	No change
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information.	9(5)(b) and 35(3)	10%	No change	No change
Payment for rendering assistance or services in connection with the application or use of scientific, technical, industrial or commercial knowledge or information.	9(5)(ba) and 35(6)	20%	10%	No change
Payment for the management or assistance in the management of any business.	9(5)(c)	20%	15%	10%
Rent or other payments for the use of movable property.	9(5)(d) and 35(2A)	10%	No change	No change
Non-resident Directors' Remuneration	37B	20%	10%	No change

5.2 Where non-residents come from countries that the Government of Brunei Darussalam has signed Avoidance of Double Taxation Agreement (DTA), the rates in Paragraph 5.1 still applies. In the situation where the rate under the DTAs are different from the rates under Section 35 of the ITA, please see Paragraph 19.0 for claim of relief according to the treaty benefits.

6.0 OBLIGATION OF PAYING TAX

6.1 Income of a non-resident derived from a Brunei Darussalam source is liable to tax in Brunei Darussalam whereby tax is withheld at source.

6.2 There shall be deemed to be derived from Brunei Darussalam: -

(a) If the specified nature of payments are borne, directly or indirectly, by a person resident in Brunei Darussalam or having a permanent establishment in Brunei Darussalam; or

(b) payments are deductible against any income accruing in or derived from Brunei Darussalam.

6.3 Resident companies or permanent establishment in Brunei Darussalam are required to act as a withholding agent for the Collector of Income Tax (CIT) in respect of specified nature of payments made to non-resident. Tax withheld is deemed to be paid by the non-resident. The payment to the non-resident should be the net amount of invoice, after taking into account withholding of tax.

Example 1

ABC Sdn Bhd, a Bruneian company signed an agreement with Excellent Pte Limited, a non-resident company based in Malaysia, to provide training to ABC Sdn Bhd staff on its customer service relationship. Training services are subjected to withholding of tax at the rate of 10%. The total fees paid for the course was BND 20,000. Treatment of withholding of tax are as follows:

Training fees (invoice amount)	BND 20,000
Less: Withholding of tax (10%)	(BND 2,000)
Payment due to Excellent Pte Limited (nett amount)	<u>BND 18,000</u>

The withholding of tax amount of BND 2,000 that has been deducted from Excellent Pte Limited is to be paid to the CIT and the remaining balance of BND 18,000 is to be remitted to Excellent Pte Limited.

7.0 FILING AND PAYMENT OF TAX DEDUCTED

- 7.1 When a resident company or permanent establishment in Brunei Darussalam make a deduction from the prescribed withholding of tax amount from the non-resident, they must file withholding tax return via System for Tax Administration and Revenue Services (STARS) (www.stars.gov.bn) and pay to the CIT the amount deducted within 14 days after the payment is made to the non-resident.
- 7.2 The period of "within 14 days" for filing and remitting the withholding of tax is inclusive weekends and public holiday.
- 7.3 The resident company or permanent establishment in Brunei Darussalam acting as the withholding agent will file in STARS by filling in the following information:
- Section A: Particulars of Payer
 - Section B: Particulars of Payee
 - Section C: Nature of Payments
 - Section D: Payment Date
 - Section E: Withholding Tax Computation
 - Section F: Declaration
- 7.4 With the filing of withholding of tax return in STARS, it is compulsory for supporting documents in relation to the payment made to non-resident to be attached as applicable such as:
- Copy of invoices and payment vouchers of the relevant transactions;

- (b) copy of contract, offer/acceptance letter or email confirmation that states agreement of fee arrangement; and
 - (c) Bank Statement or Bank Remittance Slip or any other documentary evidence showing the date and amount that is paid or credited to the accounts of the non-resident.
- 7.5 Return ID or payment reference will be generated by STARS when the filing is completed. This return ID or payment reference is to be quoted when making payment to ensure correct and automatic reconciliation process in STARS.
- 7.6 Payment of tax to CIT can be made:
- (a) By cash or cheque payment addressed 'the Government of Brunei Darussalam' to Revenue Division office; or
 - (b) via internet banking/telegraphic transfer (contact Revenue Division for details of the Bank Account number).

Example 2

ABC (B) Sdn Bhd has been invoiced BND 4,000 on the 1st May 2017 by ABC (S) Pte Ltd, the head office based in Singapore for management fee for the month of April 2017. Payment of management fee is subject to WHT at 10% which amounts to BND 400. Payment has been made to ABC (S) Pte Ltd on the 19th May 2017 at BND 3,600 after taking into account the withholding of tax.

ABC (B) Sdn Bhd is required to file in STARS and pay the withholding of tax amount of BND 400 within 14 days of the payment date made to ABC (S) Pte Ltd (which the due date is on the 2nd June 2017). If payment is made after 14 days, penalties will be imposed due to late of payment of withholding of tax (see Paragraph 20.0 for penalty imposition).

- 7.7 Section 37(7)(b) stipulates that regardless whether actual cash payment or payment via bank transfer have been made, **payment** shall deemed to be paid once the transaction is credited to the account of the payee or any other account (however designated) on behalf of the non-resident. Therefore, payment date would be either actual payment date or the date the amount is credited to the account of the non-resident, whichever is earliest.

8.0 INTEREST, COMMISSION, FEE OR OTHER PAYMENT IN CONNECTION WITH ANY LOAN OR INDEBTEDNESS

8.1 Section 9(4)(a) of the ITA consist of payments related to interest, commission, fee or other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee or service relating to any loan or indebtedness.

8.2 Interest for withholding of tax includes:

- (a) interest payments;
- (b) payment as a substitute for interest, such as a lump sum paid instead for paying periodical interest;
- (c) charges or interest under hire purchase and similar financial arrangement; and
- (d) charges (includes management charges), commission or guarantees fees in connection to securing a loan or indebtedness.

8.2 The following are examples of interest that generate income falling within the scope of Section 9(4)(a) of the ITA:

- (i) Hire purchase arrangement

Example 3

Syarikat Yakin Sdn Bhd purchases heavy machinery from Kobelco Ltd, a non-resident company based in Japan. Market price of the heavy machinery is BND 360,000. Syarikat Yakin Sdn Bhd and Kobelco Ltd entered into a hire purchase agreement for the purchase of the heavy machinery. The terms of payment: duration of payment 3 years (36 months), interest at 5% and monthly installment of BND 10,500. The breakdown of the monthly installment is BND 10,000 plus BND 500 of the interest.

The interest element of the hire purchase agreement (i.e. BND500 interest every month) is chargeable to tax in Brunei Darussalam under Section 9(4)(a) of the

ITA. Therefore, withholding of tax at the rate of 2.5% on the gross amount of interest paid amounting to BND12.50 should be deducted from the payment to Kobelco Ltd and paid to the CIT.

- (ii) Foreign loan investment

Example 4

Affex (B) Sdn Bhd is a subsidiary company of Affex International Pte Ltd, a non-resident company based in Australia. To start the operation of the branch in Brunei Darussalam, they require capital of BND 500,000 in which the parent company, Affex International Pte Ltd will loan to them with an interest rate of 3% payable annually.

The interest element of BND 15,000 (3% x BND 500,000) is subject to withholding of tax at the rate of 2.5% which is to be paid to the CIT.

9.0 ROYALTIES OR OTHER LUMP SUM PAYMENTS FOR THE USE OF MOVABLE PROPERTY

9.1 Section 9(5)(a) of the ITA consist of payments related royalties or other payments in one lump sum or otherwise for the use of or the right to use any movable property. Royalty payments made to non-resident in and outside Brunei Darussalam are subject to withholding of tax.

9.2 Royalties for withholding of tax purpose includes:

- (a) Payments received as a consideration for the use of, or the right to use –
 - (i) any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting;
 - (ii) any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial or scientific experience.

- (b) License or franchise fee which is received in one lump-sum payment upfront or in installments.

Example 5

Fruits Healthy Living Sdn Bhd, a Brunei Darussalam company buys a franchise of a famous company overseas, Hip & Happy Pte Ltd that specialize in creation of healthy fruit drink and smoothies. Both companies entered into an agreement whereby Fruits Healthy Living Sdn Bhd will pay an upfront amount of BND 250,000 as a franchise fee and will pay 8% of the sales generated in Brunei Darussalam as royalty fees to Hip & Happy Pte Ltd.

- (i) Franchise fee

The franchise fee is subject to withholding of tax at the rate of 10% which amounts to BND 25,000 is to deducted and paid to the CIT when payment has been made to Hip & Happy Pte Ltd.

- (ii) Royalty fee

The 8% royalty fee for sales generated monthly by the franchise in Brunei Darussalam is also subjected to withholding of tax at the rate of 10% which is to be deducted and paid to the CIT accordingly.

10.0 USE OF OR THE RIGHT TO USE SCIENTIFIC, TECHNICAL, INDUSTRIAL OR COMMERCIAL KNOWLEDGE OR INFORMATION

10.1 Section 9(5)(b) of the ITA consist of payments related to use of or the right to use scientific, technical, industrial or commercial knowledge or information.

10.2 Use of or right to use of know-how for withholding of tax purpose includes:

- (a) payments received for imparting knowledge connected with the use of intellectual property;
- (b) payments for the use of or the right to use of software, e.g. computer and accounting software; and

(c) payments for use of established or patented formula in connection to scientific, technical, industrial or commercial knowledge or information.

10.3 The following are examples of use of know-how that generate income falling within the scope Section 9(5)(b) of the ITA:

(i) Right to reproduce software

Example 6

Chick'n Sdn Bhd, a non-resident fast-food company from Malaysia opens up a branch in Brunei Darussalam, Chick'n (B) Sdn Bhd. Chick'n (B) Sdn Bhd is to buy a readily available software system which amounts to BND 17,000 that is specifically developed by the parent company, Chick'n Sdn Bhd for the whole operation of the fast-food branch which includes automated ordering system and accounting system. This software system once purchased by Chick'n (B) Sdn Bhd, they have the right to reproduce if there are more branches to be set up in Brunei Darussalam.

The purchase of the software from the parent company is subject to withholding of tax at rate of 10% which amounts to BND 1,700 as the software system was specifically developed for the parent company to be reproduced to its branches.

(ii) Yearly maintenance cost of software

Example 7

Based on the scenario on Example 6, both parties agreed on annual fee of BND 100,000 paid to Chick'n Sdn Bhd for the maintenance of software system.

Maintenance fees is considered as a rendering of services, thus the payment of BND 100,000 to the overseas company is subject to withholding of tax at 10%.

(iii) Additional cost of upgrading software or change request

Example 8

Based on the scenario on Example 7, after 2 years of using the software, Chick'n (B) Sdn Bhd was charged additional cost on the upgrade of software provided by the parent company, Chick'n Sdn Bhd.

If the upgrade of software is available to all the branches as users, it is liable to withholding of tax rate of 10%. Whereas if the upgrade is due to change request to add a special feature or specification exclusively only to Chick'n (B) Sdn Bhd, then it falls under the category of rendering of services and liable to withholding of rate of 10%.

(iv) Separation of hardware and software cost

Example 9

A new telecommunication company in Brunei Darussalam, Connect4U Sdn Bhd enters into an agreement with a Switzerland company, Nexus Telecom to provide hardware equipment, accessories and software package to Connect4U Sdn Bhd amounting to BND100,000. The breakdown of the agreement are as follows:

Equipment	BND 50,000
Accessories (includes cable and wiring)	BND 30,000
Software	BND 20,000
Total	<u>BND 100,000</u>

Withholding of tax is only applicable to the software element of the agreement that is subject to withholding of tax at the rate of 10% which amounts to BND 2,000. Payment for the hardware equipment and accessories are not subjected to withholding of tax.

11.0 RENDERING OF TECHNICAL SERVICES

11.1 Section 9(5)(ba) of the ITA consist of payments related to rendering assistance or services in connection with the application or use of scientific, technical, industrial or commercial knowledge or information. Fees for rendering of assistance or services performed both

inside and outside Brunei Darussalam, are deemed to be derived from Brunei Darussalam and are subject to withholding of tax.

- 11.2 Rendering of services for withholding of tax purposes refers to payments in consideration for any services of a technical or consultancy nature and this includes:
- (a) services performed by non-resident companies in the construction, engineering, medical, banking, finance, insurance, transportation, accommodation, tourism and, oil and gas industry, etc. This also includes professional services of accountants, auditors, technician, geologist, electrician, lawyers, doctors, nurses, etc. rendered through non-resident companies;
 - (b) services for the installation of technical support services, including installation of machineries and equipment; and
 - (c) consultation, training, and certification, includes Health, Safety, Security and Environment (HSSE), quality qualification, etc.

11.3 The following are examples of rendering of services that generate income falling within the scope Section 9(5)(ba) of the ITA:

- (i) Subcontract Agreement

Example 10

Excel R&D Ltd, an agriculture company in Japan was engaged to provide consultation with the construction of a modern agriculture building in Brunei Darussalam by a resident company, AGRO Sdn Bhd. The work involved will incur over a period of 2 years whereby Excel R&D Ltd will sub-contract 2 specialized staff over to Brunei Darussalam to ensure that the agriculture building meets the quality standard, and health and safety requirements. Excel R&D Ltd will invoice AGRO Sdn Bhd every month for the work performed by the 2 staff as follows:

Salary	BND 10,000
Skill Fee	BND 1,000
Per Diem	BND 300
Accommodation allowance	BND 2,000

Medical Allowance	BND 500
Total monthly package	<u>BND 13,800</u>

*Performance bonus at end of year \$10,000

The total payment that includes salary, fee, per diem, accommodation and medical allowance, in total \$13,800 is subject to withholding of tax at the rate of 10%. The annual performance bonus will also be subjected to withholding of tax as this is actually additional payment paid in connection to services rendered by the non-resident.

Regardless of how the payment is made either to Excel R&D Ltd or directly to the 2 specialized staff, withholding of tax will still be applicable at the rate of 10%. According to this example, the 2 staff are in **actual** the employees of Excel R&D Ltd. They are only temporarily contracted to AGRO Sdn Bhd for the duration of the project based on the subcontract agreement and will be transferred back to Excel R&D Ltd after the completion of the project.

(ii) Payment arrangement within the contract agreement

Example 11

JK Rolling Sdn Bhd has rendered consultant service from HP & FB Ltd, a non-resident company based in London. As part of the contract agreement, HP & FB Ltd is to provide a consultant named Sir Black to be based in Brunei for 2 months with a salary package of BND 7,000.

There could be 2 scenarios to this case:

- (1) HP & FB Ltd to invoice JK Rolling Sdn Bhd of the BND 7,000 and the payment arrangement is made to HP & FB Ltd.
- (2) HP & FB Ltd to invoice JK Rolling Sdn Bhd of the BND 7,000 and the payment arrangement is made to Sir Black bank account either in London or Brunei.

The master-servant relationship in this case is that Sir Black is employed by HP & FB Ltd and not JK Rolling Sdn Bhd. Regardless of how the payment arrangement is made,

withholding of tax is applicable at 10% which amounts to BND 700 to be deposited to CIT and the remaining of BND 6,300 is paid to HP & FB Ltd or Sir Black.

(iii) Intercompany technical service

Example 12

STM Drilling Limited is a multi-national company dealing with onshore, offshore drilling and other oil and gas related services. The subsidiary in Brunei Darussalam, STM Drilling (B) Sdn Bhd, while undertaking oil and gas projects in Brunei Darussalam, always seeks assistance from the parent company or other subsidiaries not resident in Brunei Darussalam to provide technical training, project management and other related services. Staff from the parent company and other subsidiaries are assigned to work in Brunei Darussalam for a few months or even sometimes up to a year depending on the project requirements. The salaries of the assigned staff are borne by the non-resident parent company or subsidiaries. The parent company or subsidiaries will then issue invoices to STM Drilling (B) Sdn Bhd to recover the staff cost and other reimbursements pertaining to the nature of jobs involved.

The payment to the non-resident parent company and other subsidiaries is subject to withholding of tax at rate of 10% on the gross amount (includes reimbursement) of the invoice issued.

(iv) Mobilization and demobilization of equipment

Example 13

FHZ Pte Ltd, a non-resident based in Australia, rendered technical service to Budiman Sdn Bhd valued at USD 1,000,000. Before the actual project commences, FHZ Pte Ltd incurs mobilization cost of USD 25,000 and expected demobilization cost of USD 10,000 upon completion of the project. As agreed by both companies, the cost of mobilization and demobilization will be billed to Budiman Sdn Bhd.

The services contract of USD 1,000,000 is subjected to withholding of tax. Additionally, the payments of mobilization of USD 25,000 and demobilization of USD 10,000 are additional

cost in connection to the rendering of services and are subject to withholding of tax at rate of 10%.

(v) Separation of purchase of equipment from installation services

Example 14

ARK Engineering Sdn Bhd engaged the services of Omega Pte Ltd, a non-resident company based in Indonesia for the purchase and installation of an equipment. The machinery price were agreed to be USD 250,000. In addition to the purchase, ARK Sdn Bhd had to pay the installation service cost USD 8,000, and this cost include the airfare and accommodation cost for Omega staff to come to Brunei Darussalam and for the installation of the equipment.

The payment of the installation of USD 8,000 is subject to withholding of tax at 10% as this payment is for the rendering of services. Payment for the purchase of equipment are not subjected to withholding of tax.

(vi) Specially-tailored training course

Example 15

A textile company in Brunei Darussalam, Batik Fauna Sdn Bhd is specialized in making clothing of unique design kain batik. To improve and innovate the design of their products, Batik Fauna Sdn Bhd engaged the services of a company based in Malaysia to conduct courses specially tailored to the needs of Batik Fauna Sdn Bhd.

The payment for the specially tailored courses are subjected to withholding of tax at the rate of 10%.

(vii) Customised software system

Example 16

Just For You Sdn Bhd is a fast growing resident company in Brunei Darussalam. Anticipating that their customer base will further increase in the near future, the company

decided to develop a software system from Fitch Developer Ltd, a non-resident company based in the United Kingdom that will be able to track orders efficiently for large number of customers. This service will include 2 software developers to be flown in to Brunei Darussalam. The data management and service center will be done by Fitch Developer Ltd. Just For You Sdn Bhd has been quoted BND 30,000 for the software development.

The rendering of service for the software development of BND 30,000 is subject to withholding of tax at 10% which amounts to BND 3,000. This is due to the software is specifically developed for Just For You Sdn Bhd to suit its business needs and requirements.

12.0 MANAGEMENT FEE

12.1 Section 9(5)(c) of the ITA consist of payments related to management or assistance in the management of any trade, business or profession.

12.2 Management fees for withholding of tax purpose includes:

- (a) payments charged by parent or head regional office to its subsidiaries or sister affiliates for the decision making process; and
- (b) payments charged by mutual funds, unit trust, pension funds, etc., for making investment decision on behalf of investors/owners or shareholders.

Example 17

An international bank incorporated in Singapore, GHZ Global Financial Group opens up a branch office in Brunei Darussalam, known as GHZ Brunei Ltd. On a yearly basis, the parent company, GHZ Global Financial Group will charge BND 200,000 for various management, marketing and administrative services provided to GHZ Brunei Ltd.

The management fee of BND 200,000 charged on a yearly basis is chargeable to tax in Brunei Darussalam at the withholding of tax rate of 10%.

13.0 RENTAL OF MOVABLE PROPERTY

13.1 Section 9(5)(d) of the ITA consist of payments related to rent for the use of equipment or other movable property.

13.2 Rental of moveable property for withholding tax purpose includes:

- (a) use of oil rigs, boats, ships, cars, aircraft or other equipment
- (b) use of moveable audio equipment for entertainment or cinematic purpose
- (c) use of moveable kitchen equipment
- (d) use of heavy machineries for construction

13.3 The following are activities falling within the scope of Section 9(5)(d) of the ITA:

(i) Slot hire

Slot hire is where the resident company or permanent establishment have an exclusive use of one or more "slots" or space in a ship and payments paid for slot hire are subject to a withholding of tax at 10% on the gross amount.

(ii) Bareboat charter

Where payments are made to a non-resident owner of a bareboat ship or vessel, and it is of exclusive use by the resident company or permanent establishment (charterer). The charterer obtains possession and full control of the ship or vessel along with the legal and financial responsibility and the charterer pays for all operation expenses, including fuel, crew, port expenses and hull insurance. The rental payment is subject to a withholding of tax at 10% on the gross receipt.

(iii) Time charter

Time charter is the hiring of a vessel or ship for a specific period of time. Withholding of tax at 10% is applicable on the gross amount and must be deducted from the payment of the charter fees paid in respect of the use of the ship.

(iv) Voyage charter

Voyage charter is the hiring of a vessel between a load port and a discharge port. If a ship is chartered in respect of a particular voyage, the voyage charter fee is subject to withholding of tax at 10% on the gross fees.

13.4 However, if the payment made to the non-resident owner includes element of compensation of services (such as crew management fee, fuel cost and port cost) it falls under rendering of services and subject to withholding of tax at 10%.

14.0 NON-RESIDENT DIRECTOR'S REMUNERATION

14.1 Section 37B of the ITA consist of payments related to any remuneration to any director of the company who is not resident in Brunei Darussalam.

14.2 Non-resident director's remuneration for withholding of tax purposes includes rewards or pay for the non-resident director's payment for his service such as:

- (a) salary;
- (b) director's fee;
- (c) bonus;
- (d) benefit-in-kinds (house, car, shares, health insurance, workmen compensation, etc.);
- (e) allowances (housing, mobile phone, travelling, medical, etc.);
- (f) contributions or pensions; and
- (g) compensations.

Example 18

Mr. Lee is a non-resident director from STARS & MOON Sdn Bhd. His remuneration package consists of salary BND 3,000, annual bonus BND 1,500, housing allowance BND 500 and travelling allowance BND 100.

Mr. Lee's total remuneration of BND 5,100 is subject to withholding of tax at 10%.

Example 19

Waldorf Adams is a non-resident director from W&W Sdn Bhd. Other than his monthly salary of BND 3,000, W&W Sdn Bhd is to provide him with benefits such as house accommodation and a car. For the house accommodation, W&W Sdn Bhd has to pay rent of BND 750 and for the usage of the car, rental of BND 250 per month.

The total remuneration that Waldorf Adams received every month is BND 4,000 which includes the benefits of house accommodation and car rental that W&W Sdn Bhd has provided to him. Therefore, withholding of tax at 10% is applicable on his total monthly remuneration of BND 4,000.

- 14.3 In the case of loan interest paid to non-residents directors for loan made to the resident company or permanent establishment, the interest element is subject to withholding of tax of 2.5% as the nature of payment falls under the category of interest in connection with any loan or indebtedness (see Paragraph 8.0).

Example 20

Waldorf Adams in Example 19 above has made a loan to W&W Sdn Bhd of BND 50,000 which the repayment will be made annually with interest rate of 3% as per agreement. Therefore, the interest element of BND 1,500 (BND 50,000 x 3%) is subject to withholding of tax of 2.5% which amounts to BND 37.50.

15.0 REIMBURSEMENTS

- 15.1 Reimbursements are out-of-pocket expenses which are incurred by the non-resident company in connection of rendering services or other specified nature of payment.
- 15.2 Reimbursement expenses includes cost of flight/airfare, travelling, accommodation, telephone, etc. whereby the expenses are paid by the non-resident company and then subsequently be invoiced or charged to the resident company or permanent establishment in Brunei Darussalam.

15.3 The reimbursement expenses are considered to be part of the contract value for the services rendered or other specified nature of payments. Therefore, it is subject to withholding of tax rate at 10%.

Example 21

Teguh & Tegas Sdn Bhd is a construction company rendering service from CM Engineering Pte Ltd, a non-resident company based in Thailand whereby two skilled engineers are flown in to Brunei Darussalam to provide the agreed service. In the contract agreement, CM Engineering has specify that the expenses other than the engineering service fee to be included in the contract value. Upon completion of the service, CM Engineering Pte Ltd has issued an invoice to Teguh & Tegas Sdn. Bhd. as follows:

Engineering Service Fee	BND 20,000
Flight Tickets	BND 1,000
Hotel Accommodation	BND 1,000
Food Allowance	BND 100
TOTAL	BND 22,100

The expenses other than the engineering service fee are an additional cost in connection to the services rendered to Teguh & Tegas Sdn Bhd and should be treated as part and parcel of the service. Therefore the total amount of BND 22,100 are subjected to withholding of tax at rate of 10% (i.e. BND 2,210 to be deposited to the CIT and the remaining BND 19,890 to be paid to CM Engineering Pte Ltd).

Example 22

IndiaElect Co Limited, a non-resident company based in India has been engaged by Bina Rumah Sdn Bhd to provide an electrical engineering service for a development of shophouses in Brunei Darussalam. In the agreement, the fee for the service is set at BND 150,000. Part of the agreement is that IndiaElect to send several workers to do the surveying and installation of cables. At the end of the service, IndiaElect Co Limited has invoiced Bina Rumah Sdn Bhd as follows:

Electrical Engineering Service Fee	BND 150,000
Flight Tickets for the workers	BND 7,500
Accommodation for the workers	BND 2,500
TOTAL	BND 160,000

The total of BND 160,000 is subject to withholding of tax at 10% even though the expenses reimbursed from Bina Rumah Sdn Bhd is not included in the contract agreement. The expenses are part of the service provided by IndiaElect Co Limited and are subject to withholding of tax.

16.0 DISBURSEMENTS

- 16.1 Disbursements are out-of-pocket expenses that are incurred by the resident company and paid to third party on behalf of the non-resident in connection to services rendered by the non-resident.
- 16.2 Disbursement expenses includes cost of flight/airfare, travelling, accommodation, telephone, medical, etc.
- 16.3 The disbursements are considered to be part of the contract value for the services rendered or other specified nature of payments. Therefore, it is subject to withholding of tax rate at 10%.

Example 23

MYComm Pte Ltd, a non-resident company based in Australia has provided technical service for installing high spec cables to FF Services Sdn Bhd. On the 24th May 2017, FF Services Sdn Bhd has paid the hotel accommodation for a three days stay of the three engineers provided by MYComm Pte Ltd to do the job in Brunei Darussalam amounting to BND 1,500. The cost of hotel accommodation is treated as expenses in the Profit and Loss Account of FF Services Sdn Bhd. Upon service completion on the 28th June 2017, MYComm Pte Ltd has invoiced FF Services Sdn Bhd BND 12,000 for the service provided.

The hotel accommodation that FF Services Sdn Bhd has paid for on behalf of MYComm Pte Ltd is subject to withholding of tax as it is a benefit to MYComm Pte Ltd as part of the services provided. Therefore, FF Services Sdn Bhd withheld the amount BND 150 (BND 1,500 x 10%) and paid to the CIT before 8th June 2017.

The technical service fee of BND 12,000 is subject to withholding tax at the rate of 10% which amounts to BND 1,200 and to be deposited to the CIT within 14 days from the date of which payment is made to MYComm Pte Ltd.

The calculation for the net payment to be made to MYComm Pte Ltd is as follows:

Technical Service Fee	BND 12,000
Less:	
WHT paid on technical service fee	(BND 1,200)
WHT paid on hotel accommodation*	(BND 150)
Net payment to MYComm Pte Ltd	<u>BND 10,650</u>

*The WHT paid on hotel accommodation is charged to MYComm Pte Ltd as it is the tax of MYComm Pte Ltd on their benefit of hotel accommodation paid by FF Services Sdn Bhd.

The expenses recorded in the Profit & Loss Accounts of FF Services Sdn Bhd will be as below:

Technical Service Fee – MYComm Pte Ltd	BND 12,000
Hotel Accomodation for MYComm Pte Ltd	BND 1,500
	<u>BND 13,500</u>

17.0 DEPOSIT AND ADVANCE PAYMENT

- 17.1 For any deposits or advance payments made by the resident company or permanent establishment to a non-resident company that are non-refundable in relation to the specified nature of payments are subject to withholding of tax.

17.2 The following are examples of deposit and advance payments that are subjected to withholding of tax:

(i) Deposits

Example 24

MIB Sdn Bhd is entering into a contract for a project with PT Services Ltd, a non-resident company based in Indonesia. Upon contract signing of the agreement, PT Services Ltd require 20% of the contract value of BND 200,000 as a deposit which amounts to BND 40,000 and the balance to be invoiced by PT Services Ltd and paid when the services are completed. The deposit amount is non-refundable upon completion of the project.

The non-refundable deposit amount of BND 40,000 is subject to 10% withholding tax and to be deposited to CIT within 14 days of when the payment of deposit is made to PT Services Ltd.

(ii) Advance Payments

Example 25

Indah Permai Sdn Bhd is rendering a consultation service from Green Tech Pte Ltd, a non-resident company based in Singapore for a green building project in Brunei Darussalam with a contract value of BND 750,000. The contract payment will be based on the progress of the project done. But as per agreement, Green Tech Pte Ltd requires an advance payment from Indah Permai Sdn Bhd of 5% of the contract value before they start the project.

Based on the contract agreement, the advance payment of BND 37,500 (BND 750,000 x 5%) is subject to withholding tax of 10% as the payment is part of the service fee of the contract. Indah Permai Sdn Bhd will have to deduct the withholding of tax of BND 7,500 and to be paid to the CIT within 14 days after the payment has been made to Green Tech Pte Ltd.

18.0 PAYMENTS WHICH ARE NOT SUBJECTED TO WITHHOLDING OF TAX

18.1 Example of payments made to non-residents other than the specified nature of payments are as follows:

- (i) Refundable deposits

Example 26

Hyperama Store Sdn Bhd acquired a professional trainer for training the staff in handling big inventories in warehouses from Asda Co Ltd, a non-resident company based in London. The service fee agreed is BND 3,000 but Asda Co Ltd requires a deposit of BND 500 before they can provide the training to secure the slot for Hyperama Store Sdn Bhd. The deposit is refundable at the end of the training.

The refundable deposit of BND 500 is not subjected to withholding of tax.

- (ii) Purchase of equipment, parts or goods in relation to the service provided.

Example 27

Kid Park (B) Sdn Bhd is rendering start-up service from their parent company Kid Park (M) Sdn Bhd, a non-resident company based in Malaysia which includes staff training of BND 4,500 and the purchase of play gym equipment of BND 5,500.

Upon payment made to Kid Park (M) Sdn Bhd, Kid Park (B) Sdn Bhd is only to withhold the staff training cost of BND 4,500 at 10% which amounts to BND 450 and not the play gym equipment cost, as it is a purchase of equipment which is not subject to withholding of tax.

- (iii) Salary paid to employees of the local company other than non-resident directors.

Example 28

HSHL Sdn Bhd is a company that offers innovative technology for farming equipment. HSHL Sdn Bhd employs 5 specialized technicians to install and do maintenance work on

the farming equipment. HSHL Sdn Bhd will pay monthly salary of BND 2,000 per technician.

The 5 specialized technicians are employees of HSHL Sdn Bhd and therefore the salary paid is not subject to withholding of tax.

19.0 CLAIM OF RELIEF OR REFUND

- 19.1 The Government of Brunei Darussalam has signed Avoidance of Double Taxation Agreements (DTA) with a number of countries (refer to Schedule 1) which serves to lessen the burden of tax on companies operating in Brunei Darussalam and the other signatory countries.
- 19.2 Section 77 of the Income Tax Act governs the "Repayment of tax and deduction where tax paid or payable affected by double taxation relief". At the withholding stage of when the payments are made to non-resident, the domestic rates will still apply. At a later stage the non-resident may claim treaty relief benefit for reasons such as having no Permanent Establishment in Brunei Darussalam. Brunei Darussalam adopts a refund method on DTA reliefs to ensure that the non-resident are entitled to the treaty benefits.
- 19.3 As Brunei Darussalam adopts preceding year basis of taxation for all sources of income, non-residents may apply for the relief after the end of calendar year.

Example 29

Syarikat Maju Jaya Sdn Bhd has rendered engineering service from Technet Pte Ltd, a non-resident company based in Singapore. Upon completion of the services provided in April 2017, Syarikat Maju Jaya Sdn Bhd has made payments to Technet Ptd Ltd and withholding tax to CIT in accordance to the contract agreement.

Technet Pte Ltd wishes to claim relief due DTA between Brunei Darussalam and Singapore. As the withholding tax transaction falls under the Year of Assessment 2018, Technet Pte Ltd may submit refund application to the CIT starting from 1st January 2018 to 30th June 2018 (due date of filing of Income Tax Return Year of Assessment 2018).

19.4 Non-residents from countries that has signed ADTA with Brunei Darussalam who wishes to claim relief under such ADTA, may initiate its request by filing Income Tax Return Form for the relevant Year of Assessment by emailing Revenue Division (revenue@mof.gov.bn) providing the non-residents details such as:

- (a) Name of company;
- (b) Company's registration number in their country of residence; and
- (c) Company's Registered address

19.5 The basis of claim may be incorporated in an application (official letter) addressed to the CIT (Revenue Division) for requisite relief by identifying the relevant provision of the ADTA which is relied upon in support of the claim. The following supporting documents should be attached:

- (a) Certificate of Residence (COR) for the relevant Year of Assessment from the tax authority of the non-resident's country of residence after the Year of Assessment has been completed;
- (b) invoices and proof of payment of the relevant transaction;
- (c) contract or any written agreement for the relevant transactions; and
- (d) any other necessary evidence in support of entitlement to relief under the ADTA.

19.6 Once all required documents are complete, assessment and review will be done by assessment officers. Correspondence by email will be done should there be further clarification needed. Taxpayers will be notified if the application for refund has been approved or not by the CIT.

20.0 CONSEQUENCES OF NOT DEDUCTING OR REMITTING TAX

20.1 Section 37(3) states where a resident company or permanent establishment fail to make deduction of tax from any payment made to non-resident, the amount shall be a debt due to the Government and shall be recoverable.

- 20.2 Section 37(4) states that if resident company or permanent establishment does not make payment to the CIT for the tax amount deducted from non-residents within 14 days after the payment to non-resident, a sum equal to 5% penalty of such amount of tax shall be payable. If the payment to CIT is still not made within 30 days after the payment is made to non-resident an additional penalty of 1% for each completed month which shall not exceed 15% of outstanding tax amount. This means that maximum penalty that can be imposed due to non-payment of tax is 20%.

Example 30

Boba Days Sdn Bhd has arranged payment for management fee of BND 5,000 on the 15th July 2017 for the month of June 2017 to I Boba You Co Ltd, a non-resident company based in Taiwan.

Management fee of BND 5,000 is subject to withholding of tax at 10% which amounts to BND 500 and is deducted from the payment made to I Boba You Co Ltd.

Scenario 1 – Filing and payment to CIT not made within 14 days

By the 15th day which is on 30th July 2017, Boba Days Sdn Bhd has not filed in STARS and made payments to CIT for the amount of withholding tax deducted. Therefore, the penalty imposed is BND 25 (BND 500 x 5%) which makes the total liability to be BND 525.

Scenario 2 – Filing and payment to CIT still not made within 30 days

After the 30th day which is on 15th August 2017, Boba Days has not filed in STARS and made payments to CIT, an additional penalty of \$ 5 (BND 500 x 1%) for every completed month is imposed.

Scenario 3 – Maximum penalty is incurred

If by 9th October 2018, filing and payment has not been made, maximum penalty is imposed which the total additional penalty is 15% (15 completed months). Therefore, the maximum penalty that can be imposed in this case is BND 100 (BND 500 x 20%) which the total maximum liability including the tax amount is BND 600.

Scenario 4 – Filing has been made but payment to CIT is not made within the 14 days

In the case where Boba Days Sdn Bhd has made the necessary filings in STARS on the 20th July 2017 (within 14 days) but payment has not been made before 30th July 2017, the penalty imposition will still run in the system until payment has been made to CIT.

Scenario 5 – Deduction of tax has not been made when payment is made to non-resident

If Boba Days Sdn Bhd does not make withholding of tax from the payment made to I Boba You Sdn Bhd, the outstanding tax amount with the penalty incurred is a debt due to the Government and shall be recoverable from Boba Days Sdn Bhd.

20.3 Section 37(5) states that if after deducting the tax required to be deducted and fail to give notice of such deduction in terms of filing and payment to the CIT within 14 days after such deduction, the resident company or permanent establishment shall be guilty of an offence. They shall on conviction be liable to a penalty equal to 3 times the amount of tax deductible and shall also be liable to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

20.4 Section 37(6)(b) states that the CIT may for any good cause remit the whole or any part of the additional penalty (maximum of 15%) payable under Section 37(4)(b) of the ITA. The first 5% penalty under Section 37(4)(a) cannot be waived.

21.0 EFFECTIVE DATE

This ruling is effective starting 1st April 2017.

SCHEDULE 1: List of Countries that the Government of Brunei Darussalam has signed Avoidance of Double Taxation Agreements (DTA)

No.	Country	Date of Enforcement/Signing
1	United Kingdom	1950 and 19 December 2013 (Agreement to amend the agreement for avoidance of double taxation)
2	Indonesia	3 April 2002
3	China	29 December 2006
4	Singapore	14 December 2006 and 29 August 2010 (Protocol to amend ADTA)
5	Vietnam	1 January 2009
6	Oman	28 June 2009
7	Bahrain	18 July 2009 dan 31 December 2014 (Protocol to amend ADTA)
8	Japan	19 December 2009
9	Pakistan	25 December 2009
10	Malaysia	17 June 2010
11	Laos	20 October 2010
12	Hong Kong	19 December 2010
13	Kuwait	2 June 2011
14	United Arab Emirates	21 November 2014
15	Tajikistan	Signed on 3 April 2010
16	Qatar	26 August 2016
17	South Korea	14 October 2016
18	Luxembourg	26 January 2017

Note: Please refer to MOF website (<http://www.mof.gov.bn/index.php/tax-treaties/avoidance-of-double-taxation-adta>) for softcopies of DTAs.