107A. (1) Where any person (in this section referred to as "the payer") is liable to make contract payment to a non-resident contractor in respect of services under a contract, he shall upon paying or crediting such contract payment deduct therefrom tax at the rate of -

(a) ten per cent of the contract payment on account of tax which is or may be payable by that non-resident contractor for any year of assessment; and

(b) three per cent of the contract payment on account of tax which is or maybe payable by employees of that non-resident contractor for any year of assessment,

History

Paragraph (1)(a) is amended by Act 624 of 2002 s18(a), by substituting for the word "fifteen" the word "ten" and, paragraph (1)(b) is amended by Act 624 of 2002 s18(b), by substituting for the word "five" the word "three", shall come into operation on 21 September 2002.

and (whether or not that tax is so deducted) shall within one month after paying or crediting such contract payment render an account and pay the amount of that tax to the Director General:

Provided that the Director General may -
(i) give notice in writing to the payer requiring him to deduct and pay tax at some other rates or to pay or credit the contract payment without deduction of tax; or

(ii) under special circumstances, allow extension of time for tax deducted to be paid over.

(2) Where the payer fails to pay any amount due from him under subsection (1), that amount which he fails to pay shall be increased by a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum shall be a debt due from him to the Government and shall be payable forthwith to the Director General.

History

Subsection 107A(2) is amended by Act 661 of 2006, deemed to have come into operation on 2 September 2006 by substituting for the words “an amount equal to ten per cent of the contract payment liable to deduction of tax under subsection (1) and the total sum” the words “a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum”.

Subsection 107A(2) formerly read:

(2) Where the payer fails to pay any amount due from him under subsection (1), the amount which he fails to pay shall be a debt due from him to the Government and shall be payable forthwith to the Director General.


Subsection 107A(2) formerly read:

"(2) Where the payer fails to pay any amount due from him under subsection (1), the amount which he fails to pay shall be a debt due from him to the Government and shall be payable forthwith to the Director General."

(3) Where in pursuance of this section any amount is paid to the Director General by the payer or recovered by the Director General from the payer -

(a) the Director General shall apply the amount paid or recovered under subsection (1)(a) towards payment of the tax payable for any year of assessment by the non-resident contractor to
whom the payer was liable to pay the contract payment to which that amount relates;

(b) the Director General shall refund the amount paid or recovered under subsection (1)(b) to the non-resident contractor to whom the payer was liable to pay contract payment to which that amount relates as and when the Director General deems appropriate; and

(c) if the payer has not deducted any amount in paying the contract payment with respect to which the amount relates, he may recover the amount from the non-resident contractor as a debt due to the payer.

(4) In relation to any case, nothing in subsection (1)(b) shall prevent the deduction of any tax (not being tax deducted in accordance with this subsection) in accordance with section 107.

(4A) Notwithstanding the foregoing subsections, where the amount due from the payer under subsection (1) is increased by a sum under subsection (2), the Director General may in his discretion for any good cause shown remit the whole or any part of that sum and, where the amount remitted has been paid, the Director General shall repay the same.

History

Subsection 104(4A) is inserted by Act 693 of 2009 s 30, comes into operation on 9 January 2009.

(5) In this section -

"contract payment" means any payment made for services under a contract to the non-resident contractor or his agent or any other person acting on his behalf;

"contract project", in relation to any non-resident contractor, includes any undertaking, project or scheme, being an undertaking, project or scheme carried on, carried out or performed in Malaysia;

"non-resident contractor" means any person who is not resident in Malaysia within the meaning of section 7 or 8 and who, under a contract or a subsidiary contract (not being a contract of service or apprenticeship) or an agreement or arrangement undertakes (otherwise than as an employee) any services under a contract;
"person" includes a partnership;

"professional service", in relation to any non-resident contractor, includes any advisory, consultancy, technical, industrial, commercial or scientific service;

"services under a contract", in relation to any non-resident contractor, means the performing or rendering of any work or professional service in Malaysia, being work or professional service in connection with, or in relation to, any contract project.