

PRACTICE NOTE NO. 1/2018

TAX TREATMENT ON DIGITAL ADVERTISING PROVIDED BY A NON-RESIDENT

- 1.0 This Note is issued to provide guidance regarding withholding tax on income from digital advertising provided by a non-resident.
- 2.0 The tax treatment on payment to non-residents in relation to digital advertising is dependent on the facts of each particular case where-
 - 2.1 The non-resident has no permanent establishment (PE) (where a Double Taxation Agreement applies) or where there is no business presence in Malaysia, payment is subject to withholding tax under -
 - 2.1.1 Section 109, Income Tax Act 1967 (the Act), if the payment received is a royalty income under the Act; or
 - 2.1.2 Section 109B of the Act, if the payment received is an income within the scope of paragraph 4A(ii) of this Act.
 - 2.2 If the non-resident has a PE or a business presence in Malaysia, payment received constitutes a business income which is derived from Malaysia and will be taxed under paragraph 4(a) of the Act.
- 3.0 The main criteria that determine whether withholding tax under section 109 or 109B of the Act applies are as follows -
 - 3.1 Subject to section 109 of the Act, if it is for the purchase or use of (for example) an application (Apps) by the payer that allows the payer to create their own advertisement campaign; or
 - 3.2 Subject to section 109B of the Act, if it does not involve the purchase or use of an Apps but merely a provision of service by the non-resident. In this case, the payer solely relies on the service provider to deal with all aspects of digital advertising.

**Director General of Inland Revenue
Inland Revenue Board of Malaysia**

DATE OF ISSUE: 16 MAC 2018