

FREQUENTLY ASKED QUESTIONS (FAQ)

DTAA

A. GENERAL ISSUES ON DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

1. What is a Double Taxation Avoidance Agreement (DTAA)?

A DTAA is a legally binding international agreement concluded between two countries / treaty partners / jurisdiction to eliminate double taxation on income and capital, and to prevent tax evasion and avoidance.

2. What is the purpose of a DTAA?

The purpose of a DTAA is to minimise double taxation, excessive or uncertain taxation, and tax avoidance and evasion by allocating taxing rights between two treaty partners.

3. How does DTAA work to minimize double taxation?

When income is taxable in more than one country, DTAA determines the allocation of taxing rights between the country of residence and the country of source. Relief is then provided by the country of residence to mitigate the burden of double taxation. In cases of conflict between domestic law and DTAA, the provisions of DTAA shall take precedence as stipulated under Section 132(1) of the Income Tax Act 1967 (ITA) .

4. What is the difference between a comprehensive and a limited DTAA?

A comprehensive DTAA covers a wide range of income types, whereas a limited DTAA applies to only specific categories of income, such as income from shipping and/or air transport activities.

5. Is the individual tax rate of 30% for non-residents (NR) still applicable if there is a DTAA between Malaysia and the jurisdiction where the NR is a resident, such as under the Malaysia-France DTAA?

Yes, the tax rate of 30% for non-residents is prescribed under the Income Tax Act 1967 (ITA). A DTAA does not impose tax or create taxing rights; DTAA generally restrict domestic taxation for incomes charged under domestic tax provisions. The role of the DTAA is to prevent double taxation—where the same income could be taxed in Malaysia (source state) and France (resident state). The DTAA ensures

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that double taxation is eliminated in cases where income is exclusively taxed by only one state and thereby the other state is prevented from taxing those items of income.

The DTAA provision applies, for instance, to employment income derived by a French resident (NR) consisting of salaries, wages, and other similar remuneration covered under Article 14 (Dependent Personal Services) of Malaysia-French DTAA (French DTAA). According to Section 3 and 13 of the ITA, employment income is subject to tax in Malaysia. Paragraph 1 of the DTAA mentions that the employment income is taxable only in France unless the employment is exercised in Malaysia (i.e. when the French resident physically exercised his employment in Malaysia). Paragraph 3 of Article 14 of the French DTAA listed further conditions enabling France to exclusively tax remuneration in respect of an employment income only when all 4 conditions listed under subparagraphs 3(a), (b), (c) and (d) are satisfied.

If both states are given the right to tax the same income (concurrent or shared taxation), the amount of tax that may be imposed in the source state is limited to the rate mentioned in the DTAA. Since there is no specific rate referred to in the DTAA for employment and when the provisions of the DTAA confer on the source state either an exclusive or limited right to tax, the residence state (i.e. France) is obliged to grant appropriate double tax relief to avoid double taxation for the amount of tax charged on the employment income in Malaysia.

B. DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA) AND WITHHOLDING TAX (WHT) RELATED ISSUES

6. What is a DTAA tax rate? Which rate is applicable when Malaysia has DTAA with another country?

A DTAA tax rate refers to the withholding tax (WHT) rates applicable to payments made by a payer in Malaysia to a non-resident payee, provided the payee is a resident of a country with which Malaysia has entered into a DTAA.

Tax treaties (DTAA) do not directly impose taxes; instead DTAA's limit the taxes

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that a country can impose under its domestic laws and provide relief from taxation. Before applying a tax treaty, it is important to first check if the item is taxable under domestic law and at what rate it is taxed domestically. For WHT purposes, if there are different rates available under the DTAA and domestic tax provision(s), the WHT rates applicable rate is the DTAA rate or the rate prescribed under the Income Tax Act 1967 (ITA), **whichever is lower**.

For more information, please refer to the [DTAA withholding tax rates](#) available on IRBM website (Home > International > Double Taxation Avoidance Agreement (DTAA) > Withholding Tax Rates).

7. When is a DTAA tax rate applicable?

A payer may apply the rate under a DTAA if the payee is a resident of a country or jurisdiction with which Malaysia has a DTAA. However, if Malaysia has not entered into a DTAA or only has a limited DTAA with the relevant country, the rate under the provisions in the Income Tax Act 1967 (ITA) shall apply.

8. How do you claim to use the tax rate under the DTAA and what documents are required?

To use the tax rate under the DTAA, the non-resident (NR) payee must provide written confirmation of their resident status in the form of a Certificate of Residence (COR) or letter from the revenue authority of their country of residence, confirming their tax residency to its Malaysian payer. The COR confirms the taxpayer's residence status and enables them to claim treaty benefits under the DTAA, thereby avoiding double taxation on the same income.

Please refer to the [Certificate of Residence](#) (COR) section available on the IRBM website. The COR application can be submitted via the [e-Residence Portal](#).

The Income Tax Act 1967 (ITA) provides that where a person (referred herein as "payer") is liable to make a payment subjected to WHT to a payee (resident or non-resident), the payer shall deduct withholding tax at the prescribed rate from such payment and, (whether such tax has been deducted or not) pay that tax to the

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Director General of Inland Revenue (DGIR) within one month after such payment has been paid or credited to the resident or non-resident payee.

9. What types of payments are eligible for a DTAA tax rates?

DTAA tax rates apply to specific types of income, such as dividends, interest, royalties and technical fees.

10. Can you apply a DTAA tax rate to a payment subject to WHT if the non-resident (NR) is from country that does not have a DTAA with Malaysia?

No. If Malaysia has not entered into a DTAA with the NR's country or only has a limited DTAA, the rate under the Income Tax Act 1967 (ITA) shall apply.

11. Can I claim a DTAA tax rate for royalty payments to a non-resident (NR) company in the USA?

No. Malaysia has a limited agreement with the USA, which does not cover royalties. Therefore, the domestic WHT rate of 10%, as prescribed under Section 109, Part II, Schedule 1 of the Income Tax Act 1967 (ITA), is applicable.

12. What is the WHT rate if my company makes a payment for technical fees to a resident company in Australia?

Under the 1999 Protocol to the DTAA between Malaysia and Australia, technical service fees—such as consultancy services—provided in Malaysia by an Australian enterprise through its employees or other personnel is exempt from WHT. An Australian enterprise furnishing services, including consultancy services in Malaysia, is deemed to have a permanent establishment (PE) in Malaysia under Article 5(4)(c), of the DTAA.

For further clarification, please refer to the [Public Ruling No. 10/2019ⁱ](#) available on the IRBM website.

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- 13. What is the WHT rate applicable for payments made to a resident of the Taipei Economic and Cultural Office (TECO)?**

WHT exemptions for payments to residents of TECO are governed by the [Exemption Orders P.U.\(A\) 201/1998](#) which provides for specific categories of exempted income. Please refer to the Order for details on the types of payments eligible for exemption.

- 14. What is the applicable WHT rate for royalties under the Malaysia – Thailand DTAA, the domestic WHT rate of 10% or the 15% ?**

If a royalty payment is made by a Malaysian payer to a non-resident (NR) payee in Thailand, the 10% domestic WHT rate under Section 109, Part II, Schedule 1 of the ITA applies. When there are different rates available under the DTAA and domestic tax provision(s), the WHT rates applicable rate is the DTAA rate or the rate prescribed under the ITA, **whichever is lower**.

If the royalty arises in Thailand and is paid to a Malaysian resident, the WHT rate in Thailand will depend on Thai domestic tax law. However, under Paragraph 2 of Article 12 (Royalties) of [the DTAA between Malaysia and Thailand](#), such royalties may be taxed in Thailand, but the tax charged shall not exceed 15% of the gross amount if the payee is the Malaysian resident.

C. BILATERAL TAX CREDIT

- 15. Can a person claim tax relief for payments which were subjected to WHT?**

Yes. Under the provisions of a DTAA, if the same income is taxed in both Malaysia and in a treaty country, the taxpayer may be eligible to claim tax relief—known as bilateral credit—in the country of residence. This credit is intended to eliminate double taxation on the same income.

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- 16. Can I claim bilateral tax relief under Section 132 of the Income Tax Act 1967 (ITA) for WHT deducted in Taiwan on technical services paid to a resident in TECO?**

No. Tax relief under Section 132 of the ITA is not applicable in this case. Income received or derived from TECO is governed by [Exemption Orders P.U.\(A\) 201/1998](#). If the income is not taxable in Malaysia due to the exemption, tax relief under Section 132 is not applicable. Please refer to the Exemption Order for types of income that qualify for exemption.

- 17. How do I claim a bilateral tax credit under Section 132 of ITA for a WHT payment?**

A bilateral tax credit under Section 132 of the ITA refers to a credit granted when income that is subject to Malaysian tax also has been taxed in another country. This applies only if that the country has a DTAA with Malaysia and the DTAA includes an "Elimination of Double Taxation" article. Refer to [Public Ruling No. 11/2021](#)ⁱ for detailed guidance on claiming bilateral tax credit under Section 132.

D. OTHER ISSUES

- 18. What is the procedure to claim a tax exemption under Article 12(3) of the DTAA between Malaysia and Switzerland for royalties paid to a company that is a resident of Switzerland?**

A tax exemption may be granted for royalty payments arising in Malaysia and paid to a Swiss resident, provided that the royalty is approved by the Competent Authority in Malaysia as stipulated under Article 12(3) of the DTAA between Malaysia and Switzerland.

To apply for this exemption, a formal application must be submitted to the **Tax Division, Ministry of Finance (MOF), Malaysia**. For details on the procedure, you are advised to contact the Tax Division (TAX) directly.

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- 19. My company has been taxed on profits derived from business conducted with a company in India, but my company has no permanent establishment (PE) in India. What should I do?**

Under Articles 5 and 7 of the DTAA between Malaysia and India, business profits are only taxed in India if your company carries on business through a permanent establishment (PE) in India. If your company does not have a PE in India, then India does not have the right to tax over those profits. You may contact the Indian tax authority to clarify whether a PE exists and request assistance for necessary action.

If a taxpayer considers that actions of any tax authority is not in accordance with the provisions of the DTAA, the taxpayer may present the case to the relevant Competent Authority for a Mutual Agreement Procedure (MAP) covered under Article 26 MAP of the Malaysia - India DTAA.

- 20. I used to work for 5 years in an oil and gas company based in Brunei. I am now residing in Malaysia for almost 10 months after termination of my employment contract with the Brunei oil and gas company. I recently received a bonus payment which was credited to my Malaysian bank account for my outstanding performance during employment. The Brunei tax authority wants to tax this income. Do I have to pay tax in Brunei?**

Even though you are now a Malaysian tax resident, the remuneration (for instance bonus) paid after termination of employment for work done before the employment was terminated, is considered to be derived from Brunei where the relevant employment activities were exercised. According to Article 15(1) of the Malaysia - Brunei DTAA, remuneration, in this case is past performance bonus payment, is taxable in Brunei.

ⁱ Please refer to the latest applicable Rulings or Guidelines in the event of any new publication or withdrawal of relevant documents.