

Back to Basics: Withholding Tax

Eng Min Lor & Kathryn Chung
Grant Thornton Singapore



Agenda

- 1 What is withholding tax?
- 2 What types of payments are subject to withholding tax in Singapore?
- 3 How do you withhold tax?
- 4 How do the DTAs interact with the domestic WHT rules?
- 5 Common pitfalls
- 6 Q&A

Quick questions



1. Do you make any payments to a person not known to you to be a tax resident of Singapore?
2. What type of payments do you make?
3. What is the payee's tax residence status?

What is withholding tax?

What is withholding tax?

- Withholding tax is a tax collection mechanism
- It is an alternative to collecting tax by assessment
- It is usually used in situations where collection by assessment may be difficult or impossible (e.g. the taxpayer is non-resident)
- It is done by requiring the payer of the income to deduct the tax from the amount it owes to the payee and hand it to the tax authorities before the payee gets the income

What is withholding tax?

- Withholding tax is the responsibility of the payer of the income and he will suffer penalties for failure to withhold
- It can apply where the taxpayer is either resident or non resident
- In Singapore however, it only generally applies to payments to non-residents out of specified types of income

Payments subject to WHT

Payments subject to withholding tax

1. Interest payments
2. Royalty fees
3. Rental payments
4. Technical services or management fees
5. Others (not covered here)



Interest payments

- ***Interest, commission, fee or any other payment***
 - Interest on loans
 - Interest on overdue trade payables/ late payment on purchase of goods
 - Interest on credit terms
 - Bank charges
 - Commission in connection with loan/ indebtedness
 - Guarantee fees



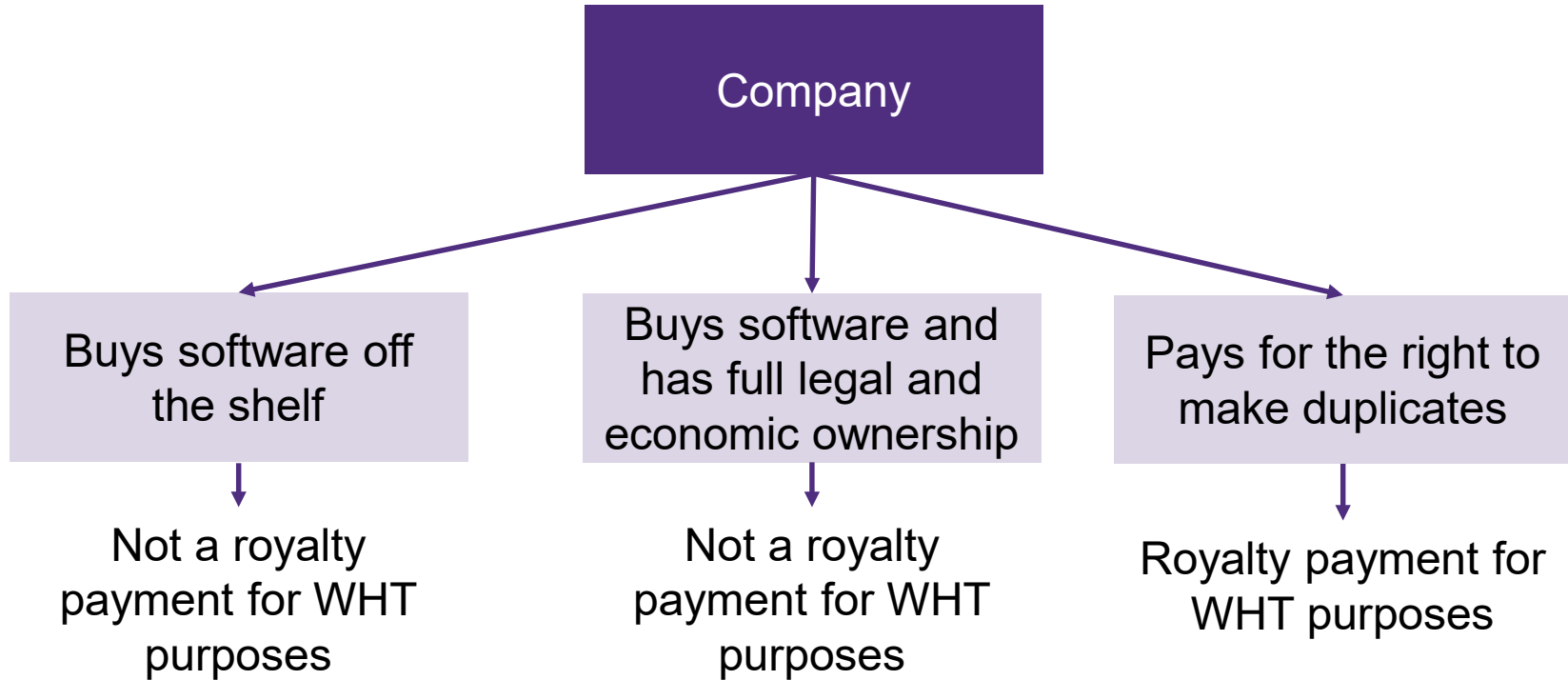
Royalty payments

- What is a royalty payment?
 - Not defined by the Singapore Income Tax Act
 - Any payments made for the consideration for the use of, or right to use, certain intellectual property rights (e.g. copyright, scientific works, patents, designs, etc.)
- *Is a licence fee for software a royalty payment?*

Software payments

- Copyright right vs copyrighted article
- Copyright right
 - Allows payer to commercially exploit the copyright
 - **Payments for copyright right are royalty payments**
- Copyrighted article
 - Payer has limitations on the use of the rights obtained and allows the payer to operate the software or use the information or digitized goods, for personal consumption or for use within their business operations
 - **Payments for copyrighted article are not royalty payments**

Software payments



Rental payments

- Only for moveable property
- There can be a difference between finance leases and operating leases

Technical services

- Know-how vs show-how
- What are examples of technical services?
- Withholding tax is not applicable on services performed outside Singapore

Management fees

- Withholding tax is not applicable on services performed outside Singapore

How to withhold tax?



You have identified certain payments made to a non-resident that might have a withholding tax exposure – what next?

WHT form

- You must file and pay the withholding tax to the IRAS by the 15th of the 2nd month from the date of payment to the non-resident
- Withholding tax returns can only be electronically filed through MyTax Portal

Withholding tax rates

Nature of Income	Tax Rate
Interest, commission, fee or other payment in connection with any loan or indebtedness	15%
Royalty or other lump sum payments for the use of moveable properties	10%
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	10%
Rent or other payments for the use of moveable properties	15%
Technical assistance and service fees	Prevailing Corporate Tax rate
Management fees	Prevailing Corporate Tax rate
Time, voyage and bareboat charter fees for the charter of ships	NIL
Proceeds from sale of any real property by a non-resident property trader	15%
Distributions of taxable income made by a REIT ("Real Estate Investment Trust") to a unit holder who is a qualifying non-resident non-individual	10%
Payment to Non-Resident Public Entertainer	10% on gross income (till 31 March 2020)

Final tax or non-final tax?

- Final tax
 - If it is a final tax, there are no further obligations for the non-resident
 - Cannot claim any deductions against the income
- Non-final tax
 - Non-resident payee may consider filing an income tax return with IRAS to claim any deductions against the income
 - A tax credit for the withholding tax suffered can be applied against any taxes due on the net income and a repayment claimed for the balance for the non-resident payee

Final tax or non-final tax?

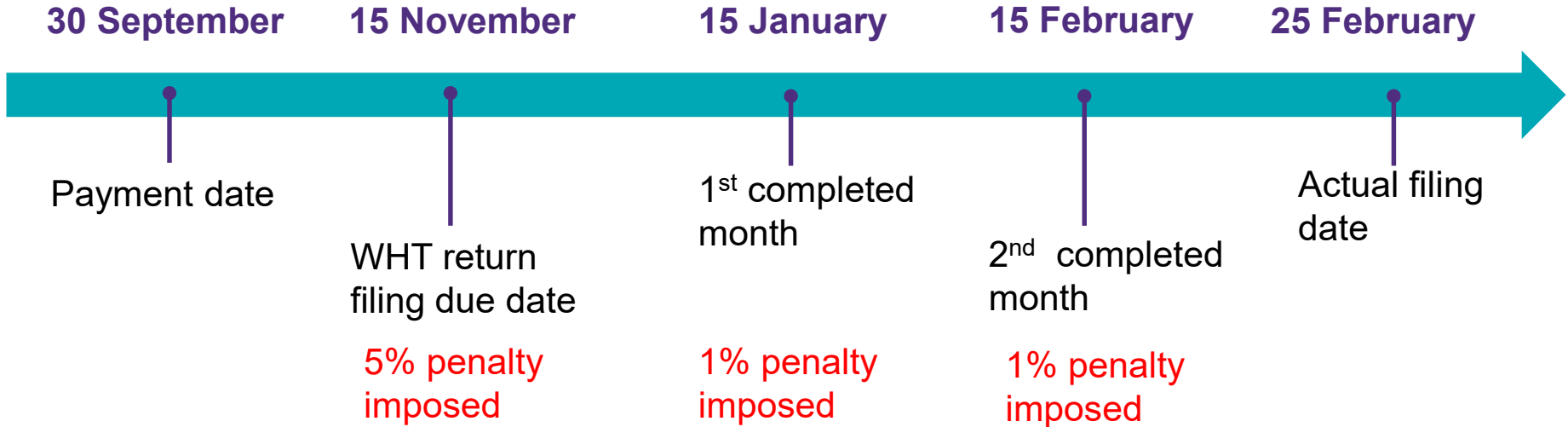
Nature of Income	Final or non-final tax
Interest, commission, fee or other payment in connection with any loan or indebtedness	Final tax
Royalty or other lump sum payments for the use of moveable properties	Final tax
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	Final tax
Rent or other payments for the use of moveable properties	Final tax
Technical assistance and service fees	Non-final tax
Management fees	Non-final tax
Time, voyage and bareboat charter fees for the charter of ships	Non-final tax
Proceeds from sale of any real property by a non-resident property trader	Non-final tax
Distributions of taxable income made by a REIT ("Real Estate Investment Trust") to a unit holder who is a qualifying non-resident non-individual	Non-final tax
Payment to Non-Resident Public Entertainer	Non-final tax

Penalties

- 5% penalty applies on late filing and payment of withholding tax
- After 30 days, if the withholding tax payment is still not paid, a further 1% penalty will be imposed after every completed month (up to maximum of 15%)



Penalties



Total penalty = 5% + 1% + 1% = 7%

Voluntary Disclosure Programme

- Reduced penalties can apply if you voluntarily go to IRAS with your errors
- Up to the discretion of the IRAS

Double tax agreements



How many double tax agreements does Singapore have?

How do DTAs interact with WHT?

- Important to identify which DTA is relevant
 - Do you know what the tax residence of the non-resident payee is?
- WHT rates
 - For certain payments, there may be a reduced rate that applies
 - E.g. commonly, interest WHT rate specified in a DTA is usually lower than the domestic WHT rate

How do DTAs interact with WHT?

- Technical fees
 - Does the relevant DTA have a Technical Fees article?
 - Does the Business Profits article apply?

Common pitfalls

Common issues with WHT

1. Date of payment
2. Certificate of Residence
3. Who bears the liability for the WHT?
4. How do you calculate WHT if there is a late WHT payment?
5. Can you claim a deduction?



Any questions?



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