

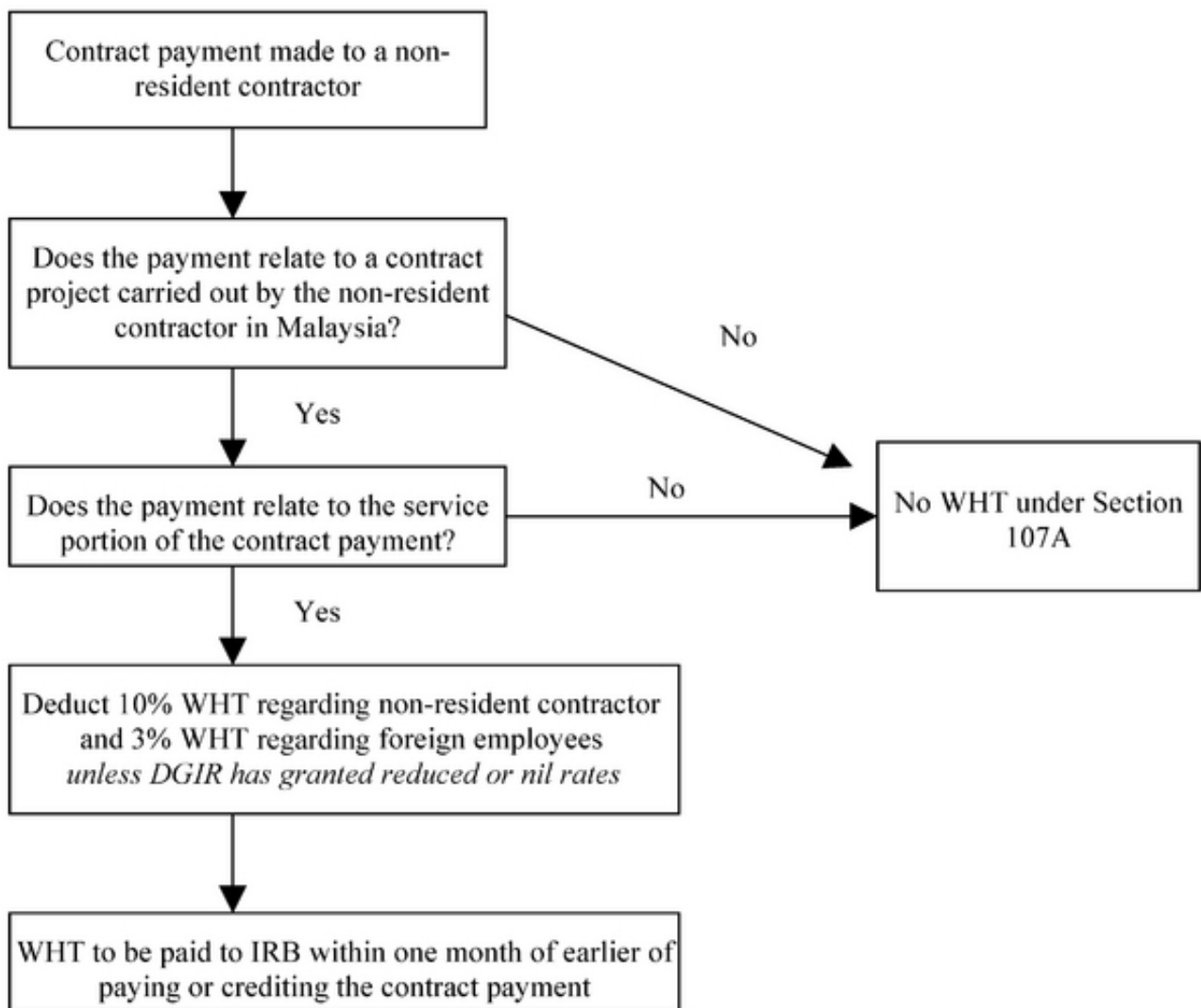
*Sample content extracted from CCH's
Malaysia Withholding Tax and Treaties Online*

Contract payments under s 107A of the *Income Tax Act 1967*

Last reviewed: 11 May 2010

Decision chart for withholding tax on contract payments under s 107A of the *Income Tax Act 1967*

Commentary on Decision chart: [¶10-050](#)



Further Reading:

[¶21-340](#) Incorporating a Malaysian subsidiary instead of a branch

[¶21-350](#) Splitting of contracts between purchase of goods and purchase of services in relation to withholding tax under s [107A](#) of the *Income Tax Act 1967*

Law: S [107A](#) of the *Income Tax Act 1967*

Derivation of income test on consultancy fees

Last reviewed: 23 April 2010

Fees for consultancy services are deemed to be derived from Malaysia if:

- (a) responsibility for payment lies with the government, a state government or a local authority (s [15A\(i\)](#) of the *Income Tax Act 1967*) or
- (b) responsibility for payment lies with a resident (s [15A\(ii\)](#) of the *Income Tax Act 1967*), or
- (c) the payment is charged as an outgoing or expense against any income accruing in or derived from Malaysia (s [15A\(iii\)](#) of the *Income Tax Act 1967*).

Effective from 21 September 2002, the derivation rules are only applicable where consultancy fees (See [¶120-010](#)) are attributable to services performed in Malaysia. Therefore, if the services are performed entirely outside Malaysia, s [109B](#) withholding tax is not applicable, although it is appropriate to consider whether obligations arise under s [109F](#) of the *Income Tax Act 1967*.

Example 11. A Inc, a United States resident company, has a branch in Malaysia. A Inc (head office) engages S Pte Ltd, a Singapore resident company, to undertake consultancy services in Malaysia to advise on new investment opportunities. The services will be performed over a two-week period and S Pte Ltd will invoice A Inc.

The amount paid by A Inc is not viewed as s [4A](#) income because A Inc is not a Malaysian resident and the amount is not charged as an outgoing or expense against any income accruing in or derived from Malaysia on the basis that the expense is borne by the head office in the US and not the Malaysian branch.

Example 12. Same facts as Example 11 above except the services to be provided by S Pte Ltd relate to a review of the business processes currently adopted by A Inc's Malaysian branch. S Pte Ltd will invoice its fee to the Malaysian branch of A Inc.

The amount is viewed as s [4A](#) income as it is charged as an expense by the Malaysian branch against income derived from Malaysia.

In a case where services are performed both within and outside Malaysia, the proportion of the contract value that is attributable to services performed in Malaysia would attract withholding tax and must be ascertained in a manner that is fair and justifiable.

The Inland Revenue Board has indicated in [Public Ruling 4/2005: Withholding Tax on Special Classes of Income](#) (See [¶300-010](#)) that the apportionment between onshore and offshore services can be determined by reference to days spent on the project. It is an overriding requirement (stated in [Public Ruling 4/2005: Withholding Tax on Special Classes of Income](#)), however, that the apportionment must be on "a reasonable basis based on the facts of each case".

Example 13. M Sdn Bhd, a Malaysian company, signed an agreement with Excel Ltd, a non-resident company, to provide a technical report on one of M Sdn Bhd's products. The consultant from Excel Ltd was in Malaysia for 6 days for preliminary discussions on the review. The total number of days spent on the whole project was 36 days. The total fee paid for the project was RM15,000. The report was later completed overseas.

The proportion of the project value attributable to the services performed in Malaysia is computed based on time (days) spent.

Total fees for the project	RM15,000
No of days spent on the whole project	36 days
No of days in Malaysia	6 days
Services performed in Malaysia	$(6/36 \times \text{RM}15,000) = \text{RM}2,500$

The amount of RM2,500 is subject to a withholding tax of 10% under s [109B](#) of the *Income Tax Act 1967*.