

Malaysia

Malaysia Clarifies Tax Treatment of Copyright and Software Payments Made by Distributor or Reseller

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The Inland Revenue Board (IRB) has recently issued a practice note clarifying that the purchase of software or the use of applications and content by a distributor and a reseller from the original owner constitutes a royalty, regardless of whether the software can be modified, exploited or distributed.

Practice Note No. 3/2023 of 5 December 2023 was issued to clarify the tax treatment of copyright and software payments made by a distributor and reseller to a non-resident. The salient features of the Practice Note are set out below.

- The tax treatment of copyright and software payments made by a distributor and a reseller to a non-resident depends on the facts of each case.
- Copyright and software payments are considered royalties because they are payments for the use or right to use of copyright and software, where the intellectual property of the software still lies with the original owner of the said copyright or software.
- Payments for software made to a non-resident without a permanent establishment or place of business in Malaysia are considered royalties and will be subject to withholding tax under section 109 of the Income Tax Act 1967.
- In the context of tax treaties, reference should be made to the definitions of "royalty" and "permanent establishment" provided in the relevant tax treaty.

The full details of Practice Note are available [here](#).

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