



INLAND REVENUE DEPARTMENT

PUBLIC RULING NO - PR/IT/2018/02



Guidance with regard to the application of Inland Revenue provisions in the event of deducting Withholding Tax in accordance with paragraph (a) of subsection (1) of section 85 of the Inland Revenue Act, No. 24 of 2017 for the services provided by the individuals.

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INLAND REVENUE DEPARTMENT
Sri Lanka

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COMMISSIONER GENERAL'S PUBLIC RULING

This Public Ruling as provided for under section 104 of the Inland Revenue Act, No. 24 of 2017 is issued for the purpose of providing guidance to the general public and officers of the Inland Revenue Department. It sets out the interpretation of the Commissioner General of Inland Revenue in respect of the relevant provisions of the tax law, and the policy and the procedure that is to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling.

Commissioner General of Inland Revenue

Inland Revenue Department.

1. Objective

The objective of this Public Ruling (PR) is to provide: -

guidance with regard to the application of Inland Revenue provisions in the event of deducting Withholding Tax (WHT) in accordance with paragraph (a) of subsection (1) of section 85 of the Inland Revenue Act, No. 24 of 2017 (IR Act) for the services provided by the individuals.

2. Relevant Provisions of tax statutes

Paragraph (a) of subsection (1) of section 85 and item (c) of paragraph 10 of the FIRST SCHEDULE to the IR Act, and the Extraordinary Gazette No. 2064/51 dated April 01, 2018.

3. Interpretation

The following interpretation is relevant for this PR:

- (i) “person” means an individual or entity and includes a body of persons corporate or unincorporate, an executor, non-governmental organization and charitable institution; (section 195 -IR Act)

4. Application of tax statutes

- (a) Withholding from service fees and contract payments (paragraph (a) of subsections (1) of section 85 of the IR Act)

As specified in above paragraph (a) of subsection (1) of section 85 of the IR Act, subject to subsection (3) of section 85, a person shall withhold tax at the rate provided for in paragraph 10 of the First Schedule to this Act where such person –

- (a) pays a service fee with a source in Sri Lanka to a resident individual who is not an employee of the payer –

- (i) for teaching, lecturing, examining, invigilating or supervising an examination;

- (ii) as a commission or brokerage to a resident insurance, sales or canvassing agent;

- (iii) as an endorsement fee;

- (iv) in relation to the supply of any article on a contract basis through tender or quotation;

or

- (v) for such other matters as may be prescribed by regulation; or

- (b)

(b) Extraordinary Gazette No. 2064/51 dated April 01, 2018

The following services are prescribed for the purpose of sub paragraph (v) of paragraph (a) of sub section (1) of section 85, as being the services rendered with a source in Sri Lanka and pays to a resident individual being:

- (i) any service provided in the capacity of independent service providers such as doctors, engineers, accountants, lawyers, software developers, researchers, academics, or any other similar service;
- (ii) any service of construction work, security service, janitorial service, consultation work of any kind, organizing of events, catering, designers, dress makers, tour guidance, entertainment, agency functions or any similar services or connected work where such services are provided under an agreement or otherwise;
- (iii) any management service;
- (iv) any type of vocational services provided as an independent service provider.

5. Clarification

As mentioned in paragraph (a) of subsections (1) of section 85 of the IR Act and the Extraordinary Gazette No. 2064/51 dated April 01, 2018, the deduction of WHT should be dealt with as follows.

1. In the event of deducting WHT in accordance with section 85 (1) (a) for the services provided by the individuals, when applying the tax rate set out in paragraph 10 of the first schedule, if the monthly payment exceeds Rs. 50,000, WHT should be deducted on total amount.
2. As set out in sub paragraphs (i) and (ii) of paragraph 1 in the respective Extraordinary Gazette No. 2064/51, the terms "similar services and similar service or connected work" include only the services which are similar and connected to the prescribed services in those paragraphs, where the other services which have not been set out in the Gazette are not subjected to WHT.
3. Providing the transport services

As the transport services have not been included within the services prescribed by the Commissioner General through the aforesaid Gazette No. 2064/51, the transport services are not subjected to WHT.

Even though some of tax payers have interpreted certain functions as providing the transport services, after reviewing the facts, it is observed that such functions are not providing the transport services, but merely the instances of renting the vehicles. At such

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instances, the respective functions should be identified as either providing of a transport service or renting a vehicle depending on the circumstances of whether the ability to control the utilization of the vehicle remains in the possession of the owner.

Following examples and justification can be used in identifying such services are as transport services or rent of vehicles as the case may be.

	Example	Reason	Categorization of the service
01.	Driver and/or fuel is provided by the vehicle owner, where the respective vehicle remains in the possession of the owner.	If the driver and fuel are provided by the owner, it can be concluded as the ability of controlling the vehicle is remained in the possession of the owner.	This situation can be considered as providing of a transport service hence not subject to WHT.
02.	Even though the driver and fuel are provided by the owner, the respective vehicle is remained in the possession of the user for a certain time period.	In this occasion it can be concluded as the ability to control the vehicle is remained with the user.	This situation can be treated a renting. Hence in terms of section 84, it is subjected to WHT.
03.	Even though the driver, fuel etc. provided by the owner, the user has colored/painted the vehicle with trade names as if to confirm his identity.	It is concluded that the ability to control the vehicle is remained with the user.	This situation can be treated as renting. Hence in terms of section 84, it is subjected to WHT.

4. In terms of sub section (a) of section 85, the services provided by an individual are subjected to WHT, furthermore as per section 85 (a) (iv), the supply of any article on a contract basis through tender or quotation is subjected to WHT considering as supply of service.

The articles supplied as per a written or oral contract/agreement which entered into supply of articles, with a particular supplier selected through tender or quotation on agreed prices for an agreed quantity to an agreed time period, are subjected to WHT. Supplying of articles in such manner can be considered as a supply of a service, furthermore, the values of the total supply including the value of the supplied articles are subjected to WHT.

5. Deduction of WHT on construction works.

The payments made in relation to the construction works are subjected to WHT, as well as the services which are connected with the construction works are also subjected to WHT.

Eg:- Pilling required for the building constructions, providing labourers to the construction works, supply of construction materials to the constructions [subjected to WHT as per section 85 (a) (iv)].

In the event of performing the construction works, there are instances that the required materials are supplied by the building owner, as well as, in some instances those materials are supplied by the contractor himself. Accordingly,

- (i) In the event of supplying the required materials by the building owner;

The value which only relevant for the construction services (excluding the values of materials supplied by the building owner), is subjected to WHT.

- (ii) If the materials are supplied by the contractor himself;

The total contract value (including the value of the materials) is subjected to WHT.

6. Payment for any type of vocational services provided as an independent service provider.

In the event of making payments to any type of vocational services provided by any resident person as an independent service provider, WHT should be deducted as indicated at the services prescribed by the Commissioner General through the Extraordinary Gazette No. 2064/51. This includes the providing of services by any person through applying his knowledge, talent and/or experiences as a stated certain services below. However, the employment is not included in this regard.

Eg: - Carpenter work

Out growers

6. Effective Date

This ruling is effective from the year of assessment 2018/2019.


Commissioner General of Inland Revenue

Inland Revenue Department

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