



# Taxable online business income and tax issues on payment of online advertisement expenses

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# Contents

- Part 1: Taxable online business income
  - Is it an income on which tax is chargeable?
  - Is the income derived from Malaysia?
  - Examples
  
- Part 2: payment of online subscription and advertisement expenses
  - Withholding tax
  - Taxation issues

# **Part 1: Taxable Online Business Income**

**1**

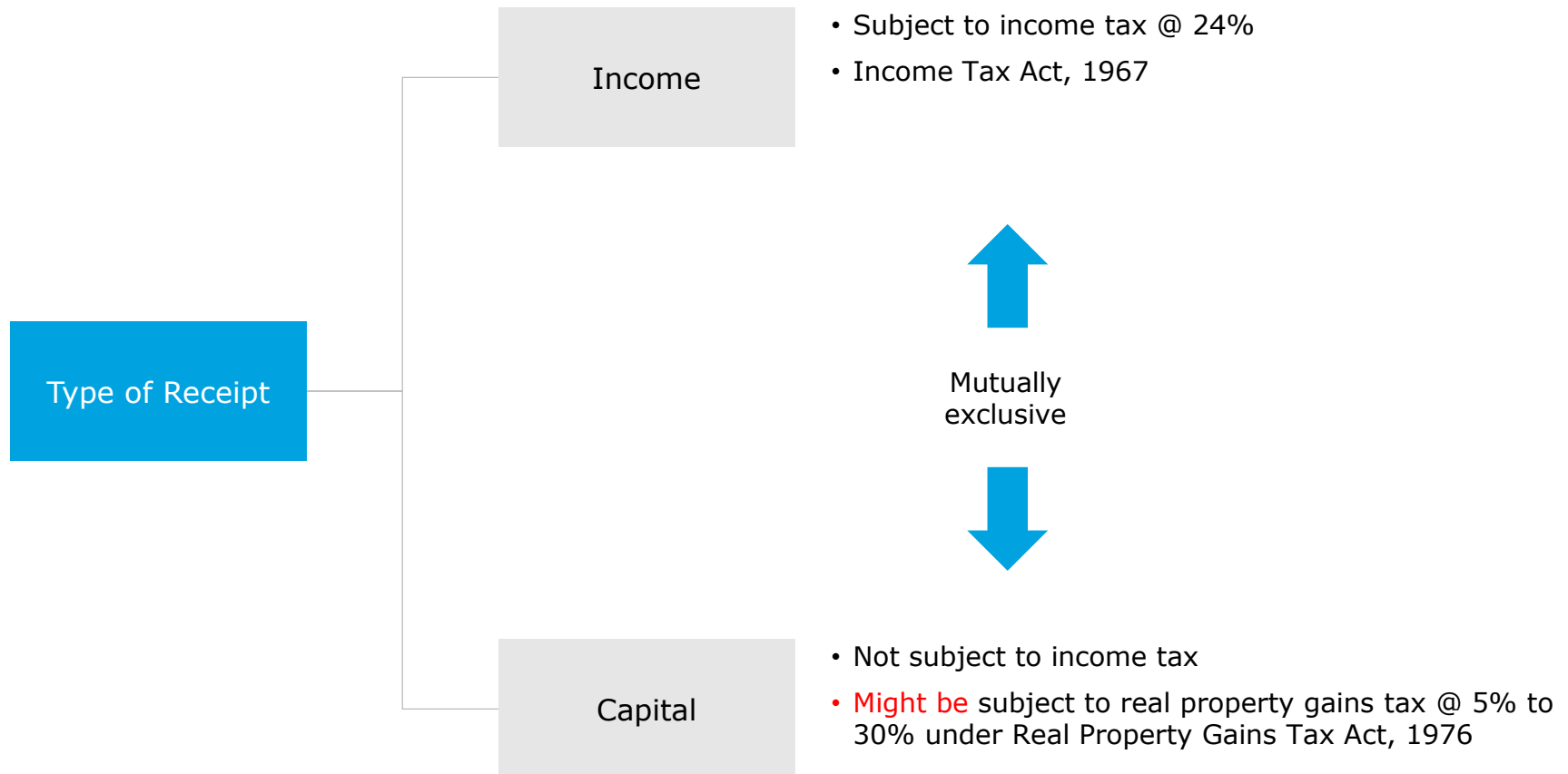
**Is it an income on which tax is chargeable?**

**2**

**Is the income derived from Malaysia?**

**Is it an income on which tax is chargeable?**

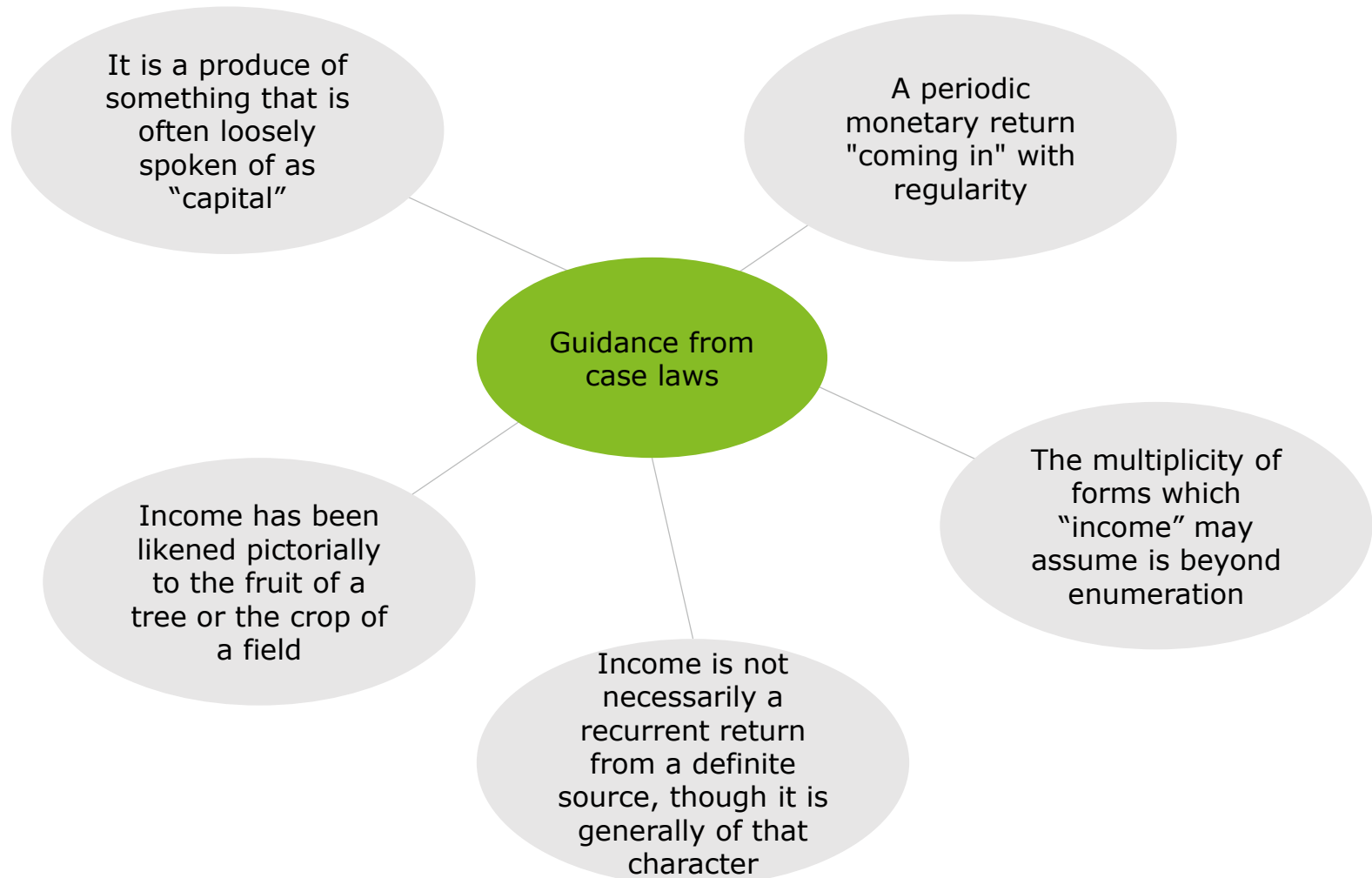
# Rule of Thumb



# Is it an income on which tax is chargeable?

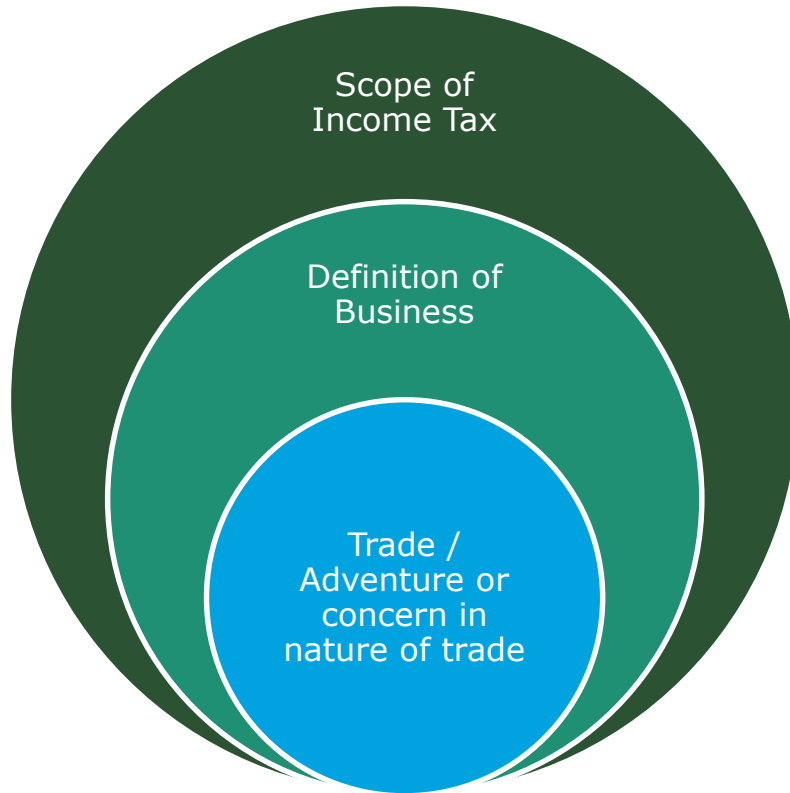
## Definition of income

"Income" is not defined in ITA 1967



# Is it an income on which tax is chargeable?

## Trade / Adventure or concern in nature of trade



- Definition of 'business' under Section 2 of ITA 1967:-  
*"Business" includes profession, vocation and trade and every manufacture, **adventure or concern in the nature of trade**, but excludes employment*
- Case law definitions:-
  - Profession – intellectual skill (academic preparation)
  - Trade – commercial undertaking in exchanging goods for money (buying and selling)
  - Manufacturing – original material must undergo a transformation so that a new and different article or product emerges, which has a distinct name, character or use
  - **Adventure or concern in the nature of trade** (isolated transaction) – to be determined by badges of trade



# Is it an income on which tax is chargeable?

## Badges of trade

**1**

### **Profit seeking motive**

Having an intention to make a profit can indicate a trading activity (e.g. intention of acquiring a plot of land is solely to resell it at a profit without any intention of holding it as an investment)

**2**

### **Number of transactions**

Repeated and systematic transactions are indicative of trading activity (e.g. sale of residential properties in large quantities)

**3**

### **Nature of asset**

Investment assets, personal assets and assets used in a trade (e.g. plant and machinery) do not indicate trading activity

**4**

### **Existence of similar trading transactions or interests**

Transactions that are similar to those of an existing trade imply trading activity (e.g. a property developer ventures into construction activity)

**5**

### **Changes to the asset**

Changes such as repairs, modifications and improvements made to the asset to make it more marketable are indicative of trading activity (e.g. acquire bare land, obtain Development Order and immediately sell the land)

# Is it an income on which tax is chargeable?

## Badges of trade

6

### **The way the sale was carried out**

Was the asset sold in a way that was typical of trading organisations (indicative of trade)?  
Alternatively, did it have to be sold to raise cash for an emergency (indicative of non-trade)?

7

### **The source of finance**

Money borrowed to buy the asset is indicative of trade

8

### **Interval of time between purchase and sale**

Assets that are the subject of trade will normally, but not always, be sold quickly. Therefore, an intention to resell an asset shortly after purchase will support trading. However, an asset, which is to be held indefinitely, is less likely to be a subject of trade

9

### **Method of acquisition**

An asset that is acquired by inheritance, or as a gift, is less likely to be the subject of trade

**No single badge is a decisive pointer to the existence of a trade. It should be weighed along with all other relevant factors**

# Badges of Trade – Example

Mr A is currently an IT Manager in a software trading company. In the past 10 years, Mr A had developed and sold to Microsoft 20 Apps developed by him using his own casual time to earn some extra income. The sale was done by an agent appointed by Mr A. Each Apps sold yields handsome returns. Mr A did not incorporate such income in this tax return as it was not part of his employment income. Mr A is of the view that such income is capital receipts not subject to tax.

Badges of Trade	Assumption of Facts and High Level Assessment	Indicative of
Profit seeking motive	Mr A developed the Apps with the intention to earn some extra income	Trade
Number of transactions	IRB is likely to claim that the 20 sale transactions indicates trade instead of capital receipt.	Trade
Nature of asset	The App itself may be a capital investment which yields subscription fee (income) or it may be sold for profit. In this case, the Apps are sold for profit.	Trade
Existence of similar trading transactions or interests	Mr A has intimate knowledge of the IT market. IRB may interpret this as indicative of trade	Trade
Changes to the asset	Not applicable. Mr A develop the App.	N/A
The way the sale was carried out	Mr A engaged agent to market his Apps, it is indicative of trade	Trade
The source of finance	Not applicable	N/A
Interval of time between purchase and sale	Not applicable	N/A
Method of acquisition	Not applicable	N/A

## Badges of Trade – Example

1. It is likely for Mr A income to be treated as income (instead of capital).
2. Hence, those gains should have been subjected to income tax.
3. In the event of IRB audit, back taxes and penalties will be computed.
4. Penalty of 80% to 300% will be imposed after 30 June 2019.

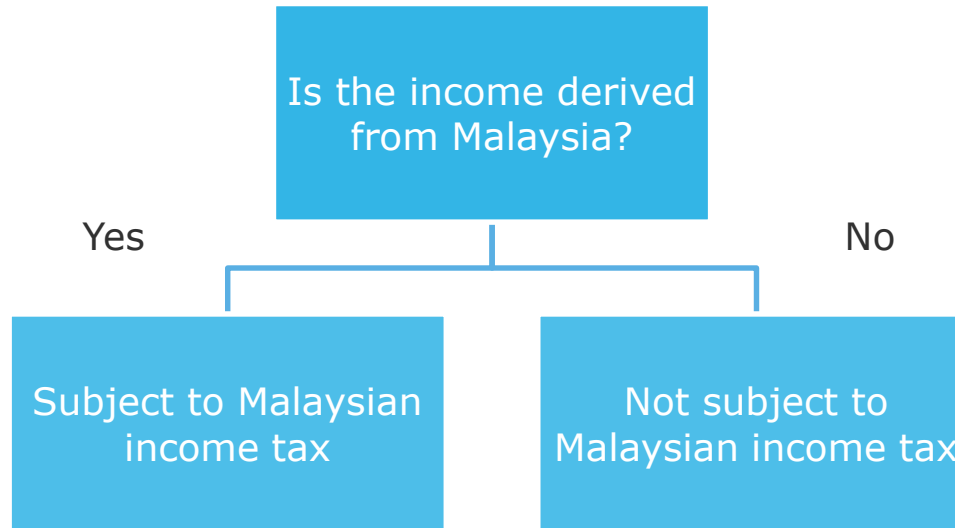
	Personal Income Tax	Chargeable Gains	Tax @ 25%	Penalty	Total
			RM	RM	RM
Gain from disposal (2008 to 2018)	25%	2mil	500,000	400,000 (80%)	900,000
Voluntary Disclosure Program (by March 31)			500,000	50,000 (10%)	550,000

} RM350,000

**Is the income derived from  
Malaysia?**

# Is the income derived from Malaysia?

## Rule of thumb



Guiding principles for Business Income:-

Derived from Malaysia if:-

- a) Activities were carried on in Malaysia.
- b) Section 12 of the Income Tax Act, 1967 – “.....so much of the gross income from the business as is not attributable to operations of the business carried on outside Malaysia shall be deemed to be derived from Malaysia..”

# Examples

# Types of online businesses

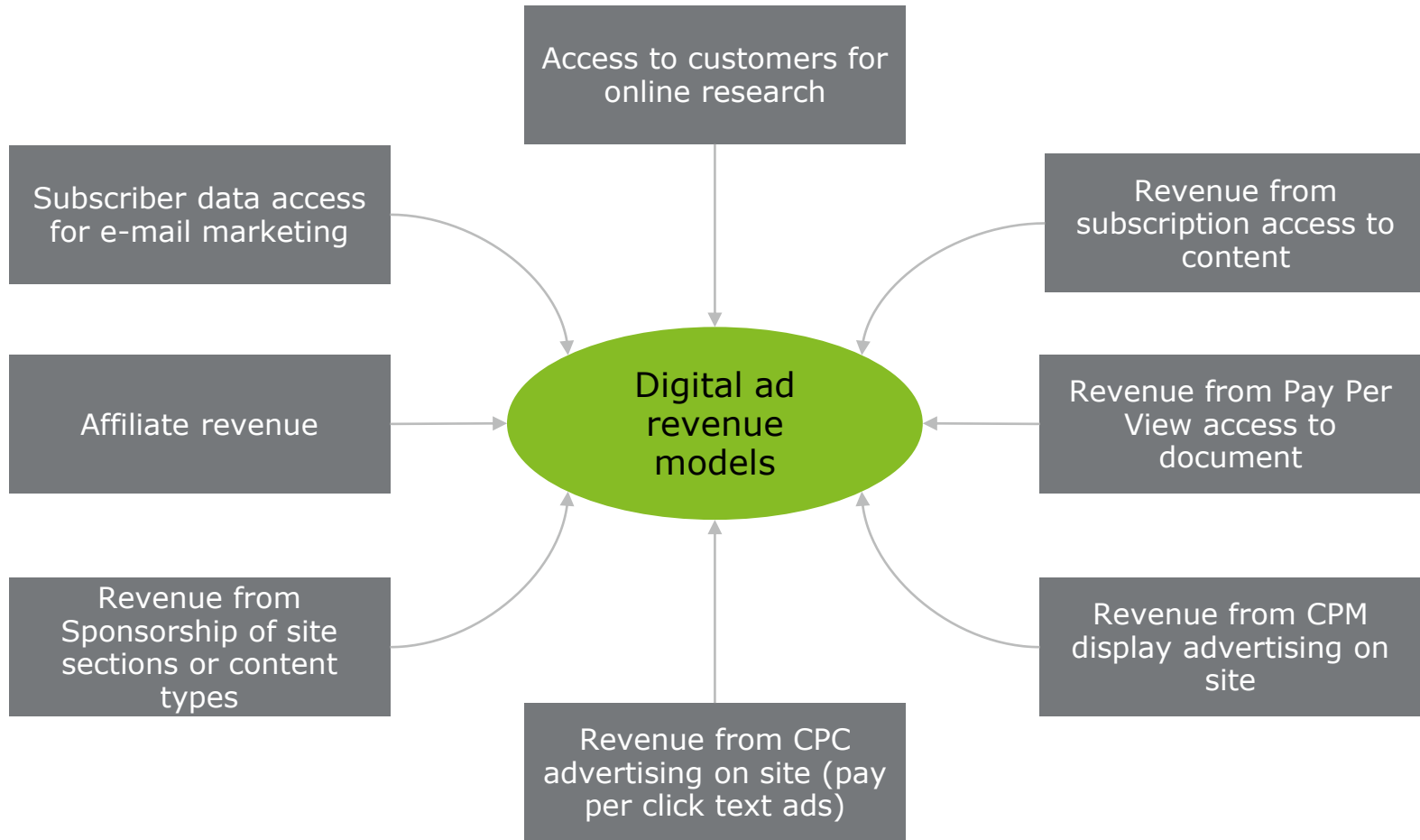
## Infinite potential





# Types of digital ad revenue models

## Select examples



# Other business models

## High profile examples

### The Subscription Model

Netflix, Dollar Shave Club, Apple Music

### The Freemium Model

Spotify, LinkedIn, Dropbox

### The Free Model

Google, Facebook

### The Access-over-Ownership Model

Zipcar, Peerbuy, AirBnB

### The Hypermarket Model

Amazon, Apple

### The Marketplace Model

eBay, iTunes, App Store, Uber, AirBnB

### The Pyramid Model

Amazon, Microsoft, Dropbox

### The Experience Model

Tesla, Apple

### The Ecosystem Model

Apple, Google

### The On-Demand Model

Uber, Operator, Taskrabbit

# Example 1

## Profession



### Criteria:

The taxpayer possesses intellectual skill and undergone academic preparation.



### Profile:

Mr X is a freelance software writer.



### Activities:

Mr X develops application software (a.k.a. mobile apps) from his home-office in Malaysia. The app is the property of Mr X and he is the sole party retaining the right to commercial exploitation of the app. He hosts it at distribution channels such as Apple's AppStore. End users download the apps and are granted license for installation and usage. The taxpayer receives license fees from the distributor.



### Remuneration:

Mr X receives license fees from the distributor on a monthly basis. This constitutes Mr X's income.

# Example 2

## Variation



Variation:

Mr X sells the right to the app.



Implications:

Assess Mr X's badges of trade to determine whether the sale proceeds are income or capital receipts. Example below:-

Badges of Trade	Assessment (Example)
Profit seeking motive	Intention was to develop the app to generate license fee over long term.
Number of transactions	This is the only sale transaction undertaken by Mr X.
Nature of asset	The app is used to generate license fee over several years.
Existence of similar trading transactions or interest	None.
Changes to asset	No major changes to make the app more marketable. Merely released several patches to fix technical issues and bugs.
The way the sale was carried out	Mr X did not advertise the intended sale. Instead, Mr X was approached by the purchaser.
The source of finance	Not applicable.
Interval of time	Mr X sold the app four years after it was first launched in Apple AppStore. This holding period is relatively long as many popular apps became obsolete / unpopular in shorter timeframe.
Method of acquisition	Mr X utilized his experience and knowhow to develop the app.

# Example 3

## Vocation



### Criteria:

The taxpayer derives income from the calling / way in which he passes life.



### Profile:

Mr Y is a professional cyclist and regularly writes product reviews.



### Activities:

Companies regularly give the latest bicycles and equipment to Mr Y, free of charge. In return, Mr Y uses the goods in Malaysia and writes product reviews in high profile cycling websites.



### Remuneration:

The free goods (i.e. bicycles and equipment) constitute Mr Y's income despite the absence of cash exchanging hands. The amount of income is the market value of the goods.

# Example 4

## Variation



Variations:

Profile	Activities	Remuneration Received
Famous blogger	Updates personal blog with experience gained from travelling locally and abroad. Regularly receives free luxury products in the capacity of brand ambassador and also writes product reviews.	<ul style="list-style-type: none"> <li>• Cash sponsorship</li> <li>• Free air tickets and hotel accommodation</li> <li>• Free luxury products</li> <li>• Advertising revenue (e.g. Google AdSense, Nufngang)</li> </ul>
A college student cum professional computer game player	Prepares video tutorials and commentaries on computer games and uploads it into YouTube.	<ul style="list-style-type: none"> <li>• Cash sponsorship</li> <li>• Advertising revenue</li> <li>• BitCoin</li> </ul>
Video blogger / YouTube influencer	Makes original contents on current events and lifestyle matters. Uploads them into YouTube.	<ul style="list-style-type: none"> <li>• Cash sponsorship</li> <li>• Advertising revenue</li> </ul>



No change in tax implications.

# Example 5

## Trading



### Criteria:

The taxpayer carries on commercial undertaking in exchanging goods for money.



### Profile:

Mrs Z is a housewife.



### Activities:

Mrs Z sells children's toys online through three platforms (i) social media such as Facebook (ii) e-commerce websites such as mudah.my (iii) mobile messaging apps such as WhatsApp. The goods are then delivered to the customers via courier services or Cash on Delivery (COD).



### Remuneration:

The sale proceeds constitute Mrs Z's income.

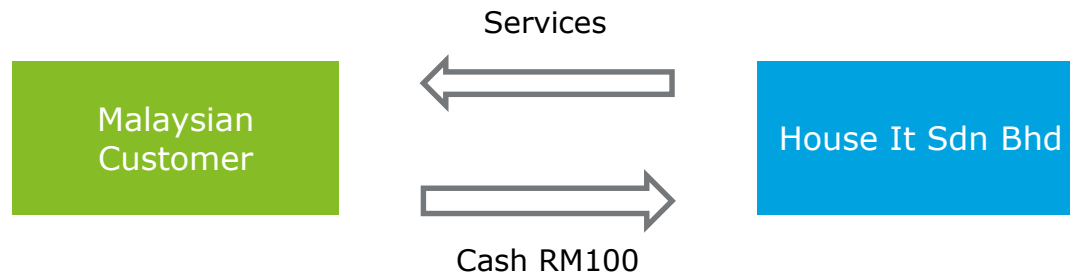
**Part 2:**  
**Payment of Online  
Subscription and  
Advertisement Expenses**



# **Withholding Tax Mechanism**

# Taxation of Malaysian Residents

1. House It Sdn Bhd is a company principally involved in trading of household items.
2. Its board of directors conduct meetings in Malaysia to decide the management and control of company business. By that virtue, House It Sdn Bhd is a Malaysian resident.



3. House It Sdn Bhd's income derived from Malaysia is subject to income tax.
4. House It Sdn Bhd is solely responsible for settlement of its tax liability and other administrative matter.
5. Malaysian Customer is not required to adhere to any administrative matter in relation to House It Sdn Bhd's tax liability.

# Taxation of Non-Malaysian Residents

1. Foreign Co Ltd is a company principally involved in provision of design service.
2. Its board of directors **does not** conduct meetings in Malaysia to decide the management and control of company business. By that virtue, Foreign Co Ltd is **not** a Malaysian resident.



3. Foreign Co Ltd's income derived from Malaysia is subject to income tax.
4. Although the tax liability is Foreign Co Ltd's, Malaysian Customer is responsible to:-
  - withhold taxes at the correct rate; and
  - remit withholding amount together with correct payment form within one month from date of payment or crediting.
5. The law will penalize **Malaysian Customer** for non-compliance.

# Types of Income Subject to Withholding Tax

Section	Withholding Amount	Type of Income
109	15% (Preferential rate available)	Interest
109	10% (Preferential rate available)	Royalties
109F	10%	Casual income/gains falling under Section 4(f) of ITA 1967
109B	10% (Preferential rate available)	<ul style="list-style-type: none"> <li>• Amounts received by a non-resident in consideration services rendered by non-resident or his employees in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from that non-resident</li> <li>• Amounts paid in consideration of <b>any advice given, or assistance or services rendered</b> in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or</li> <li>• Rent or other payments to a non-resident under any agreement or arrangement for the use of any moveable property</li> <li>• Non-residents without PE or business presence in Malaysia</li> </ul>
107A	10% + 3%	<ul style="list-style-type: none"> <li>• Contract payments in respect of services under a contract performed in Malaysia</li> <li>• Non-residents who have PE or business presence in Malaysia</li> </ul>

- Payer shall within a month from the date of payment/credit, remit the tax of the non-resident in the form of withholding tax to the IRB.

# **S.109 Withholding Tax on Royalties**

Classification of income

Derivation of income

Collection mechanism

Definition widened. **“Royalty”** includes any sums paid as consideration for, or derived from:

- a) The use of, or the right to use in respect of, any copyrights, **software**, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or other like property or rights
- b) The use of, or the right to use, tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or reproduced in Malaysia, or other like property or rights.
- c) The use of, or the right to use, know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill.
- d) The reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:**
  - i. Satellite**
  - ii. Cable, fibre optic or similar technology**

**e) The use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by:**

- i. Satellite**
- ii. Cable, fibre optic or similar technology**

**f) The use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence.**

**g) A total or partial forbearance in respect of:**

- i. the use of, or the granting of the right to use, any such property or right as is mentioned in para (a) or (b) or any such knowledge, experience or skill as is mentioned in para (c)**
- ii. the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in para (d)**
- iii. the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in para (e)**
- iv. the use of, or the granting of the right to use, some or all such part of the spectrum specified in a spectrum licence as is mentioned in para (f)**

h) The alienation of any property, know-how or information mentioned in para (a), (b) or (c) of this definition.

# Potential payments that may fall under royalty

a) The use of, or the right to use in respect of, any copyrights, software, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or other like property or rights.

- Payment for use of software
- Purchase of software?

(c) The use of, or the right to use, know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill

- Supply of information on markets or fashion trends
- Information concerning future technological advances
- Payments for access to unpublished information contained in a database
- Supply of the source code or algorithms of a program

(d) The reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by  
**(i) satellite; or (ii) cable, fibre optic or similar technology**

- Movies or music streamed via the internet or received via satellite.
- E.g. iTunes, Netflix, Spotify, Amazon, Google Play

(e) The use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by **(i) satellite; or (ii) cable, fibre optic or similar technology**

- Payments made by satellite TV, cable TV or online streaming TV operators to non-residents for right to broadcast movies or music which are transmitted via satellite or internet

*(f) The use of, or the right to use, some or all of the part of the radio frequency spectrum specified in a relevant licence*

- Payment in relation to spectrum licences (including rights to use such licences) to non-resident who holds the relevant licence

# WHT on Royalty



1. Royalty income will be taxable in Malaysia is if it deemed derived from Malaysia.
2. Derivation of royalty income is dictated under Section 15 of ITA 1967:-

## General Derivation Rules

Deemed to be derived from Malaysia:-

- If responsibility for payment lies with the government, a state government, local authority;
- If responsibility for payment lies with Malaysian resident person; or
- The royalty is charged as an outgoing or expense against any income accruing in or derived from Malaysia.



# WHT on Royalty

Classification of Income

Derivation of income

Collection mechanism

(1) Where any person (in this section referred to as the payer) is liable to pay interest or royalty derived from Malaysia to any other person not known to him to be resident in Malaysia, other than interest or royalty attributable to a business carried on by such other person in Malaysia, he shall upon paying or crediting the interest (other than interest on an approved loan or interest of the kind referred to in paragraph 33, 33A, 33B, 35 or 35A<sup>2</sup> of Part I, Schedule 6) or royalty deduct therefrom tax at the rate applicable to such interest or royalty, and (whether or not that tax is so deducted) shall within one month after paying or crediting the interest or royalty render an account and pay the amount of that tax to the Director General:

Collection mechanism is Section 109 of ITA 1967, which is identical for interest. The default withholding amount is 10% of gross royalty.

# **S.109B Withholding Tax on Special Classes of Income [Section 4A Income]**

# WHT on Special Classes of Income

Classification of income

Derivation of income

Collection mechanism

Section	Description	General Example
4A(i)	Amounts received in consideration of <b>services</b> rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from such person.	<ul style="list-style-type: none"> <li>• Provision of personnel for advisory or supervisory services</li> <li>• Installation and commissioning services</li> </ul>
4A(ii)	Amounts paid in consideration of any <b>advice given, or assistance or services</b> rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;	<ul style="list-style-type: none"> <li>• Management or marketing services</li> <li>• Consultancy services</li> <li>• Legal services</li> <li>• Inter-company technical services</li> <li>• Specially-tailored training course</li> </ul>
4A(iii)	<b>Rent or other payments</b> made under any agreement or arrangement for the use of any <b>moveable property</b> .	<ul style="list-style-type: none"> <li>• Rental of computer equipment</li> <li>• Rental of server?</li> <li>• Leasing / Charter of ships, oil rigs etc</li> </ul>

# WHT on Special Classes of Income



1. Section 4A income will be taxable in Malaysia is if it deemed derived from Malaysia.
2. Derivation of Section 4A income is dictated under Section 15A of ITA 1967:-

## General Derivation Rules

Deemed to be derived from Malaysia:-

- If responsibility for payment lies with the government, state government, local authority or a Malaysian resident; or
- If the payment is charged as an outgoing or expense in the accounts of a business carried on in Malaysia.

3. Reminder: Location of services rendered is immaterial.

# WHT on Special Classes of Income

Classification of Income

Derivation of income

Collection mechanism

(1) Where any person (in this section referred to as "the payer") is liable to make payments to a non-resident—

(a) for services rendered by the non-resident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such non-resident;

(b) for technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or

(c) for rent or other payments made under any agreement or arrangement for the use of any moveable property,

which is deemed to be derived from Malaysia, he shall, upon paying or crediting the payments, deduct therefrom tax at the rate applicable to such payments, and (whether or not that tax is so deducted) shall within one month after paying or crediting such payment, render an account and pay the amount of that tax to the Director General:

In the absence of the non-resident's permanent establishment / business presence in Malaysia, the collection mechanism is Section 109B of ITA 1967. The default withholding amount is 10% of gross amount.

\* Withholding tax is exempted on services rendered outside Malaysia.

# Income characterisation

## Example 1 – online subscription of database

 LexisNexis®



- ABC Sdn Bhd pays XYZ Co (UK Co) for online subscription of legal database.
- ABC Sdn Bhd is allowed to access, search, browse and view the Content in the legal database using password provided by XYZ Co.
- It is also allowed to print and download the Content from the subscriptions for exclusive use of the authorised users.
- ABC Sdn Bhd is not allowed to alter or modify the content or reproduce, distribute or copy the Content of the legal database.
- There is no logic, algorithms or programming languages or techniques provided to ABC Sdn Bhd.
- The subscription fee is a business income to XYZ Co.
- XYZ Co is a UK tax resident and does not have a permanent establishment (PE) in Malaysia.

***What income is XYZ Co receiving and what would be the applicable withholding tax (WHT) rate?***

# Income characterisation

## Analysis from Malaysian perspective

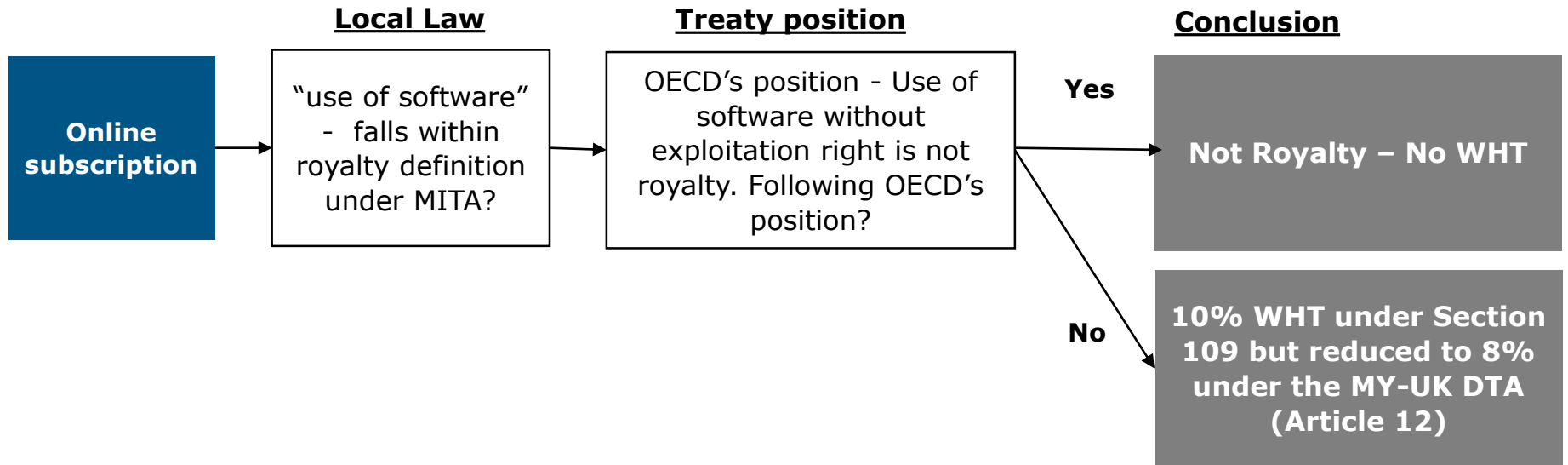
### **Income Tax Act, 1967**

- “Platform”; “Search engine” = use of software
- Copyright vs copyrighted item

### **OECD/Treaty**

- OECD’s position
  - Commentaries on Article 12
- Non-OECD member’s position on Article 12 (Royalties) and its commentary
  - Malaysia reserves its position on the treatment of software
- Definition of royalties under Article 12 of the MY-UK DTA

*“royalties” means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.*



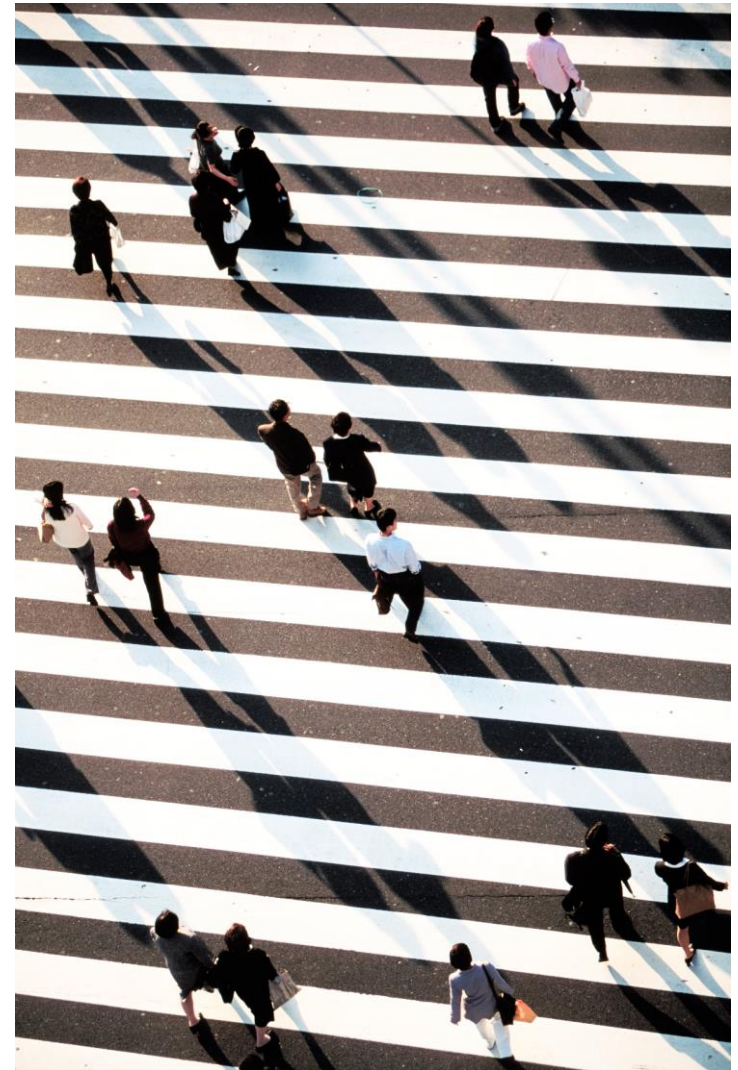


# Income characterisation

## Example 2 – Payment for online advertising

- ABC Sdn Bhd pays XYZ Co (US Co) for online advertising services. XYZ Co will design the advertisement and disseminate to users of a given web site where “banner ads” would be placed in the website.
- ABC Sdn Bhd is not allowed to use the applications of XYZ Co.
- Duration of services in Malaysia: 0 day, services rendered wholly outside Malaysia.
- The service fee is a business income to XYZ Co.
- XYZ Co is a tax resident in US and XYZ Co does not have a PE in Malaysia.

**What income is XYZ Co receiving and what would be the applicable WHT rate?**



# Income characterisation

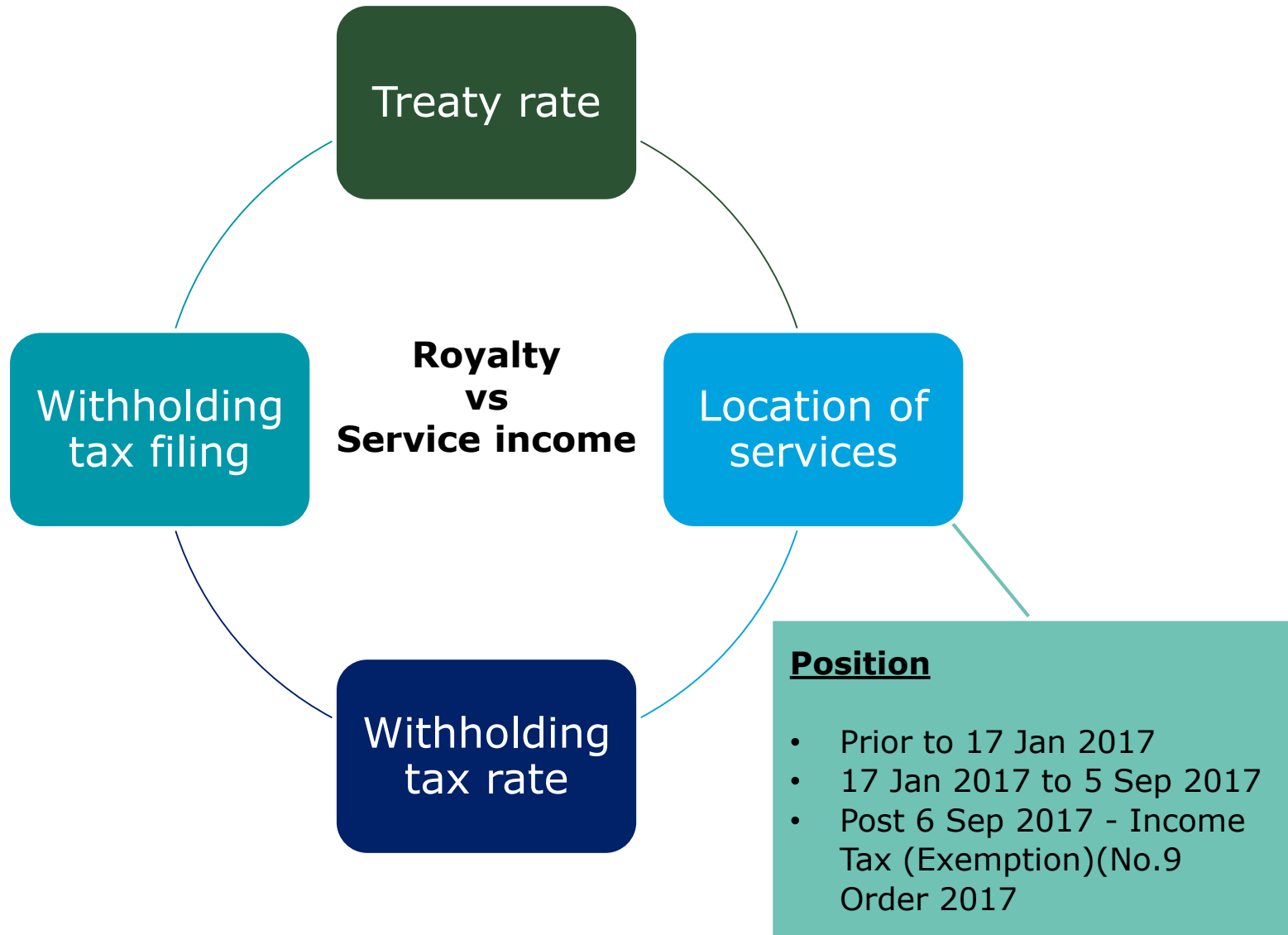
## Example 2 – Payment for online advertising

Practice Note No. 1/2018 – Tax treatment on digital advertising provided by a non-resident

Non-resident	Type of payment	Withholding tax
No permanent establishment / business presence in Malaysia	<b><u>Royalty income</u></b> If it is for the purchase of / use of an application (Apps) by the payer that allows the payer to create its own advertising campaign.	10% (Section 109 of the ITA)
	<b><u>Service fee income (Section 4A(ii))</u></b> If the payer solely relies on the service provider to deal with all aspects of digital advertising where there is no involvement of the purchase / use of Apps.	10% (Section 109B of the ITA – 0% if services is performed outside Malaysia?)

# Income characterisation

Why does it matter?



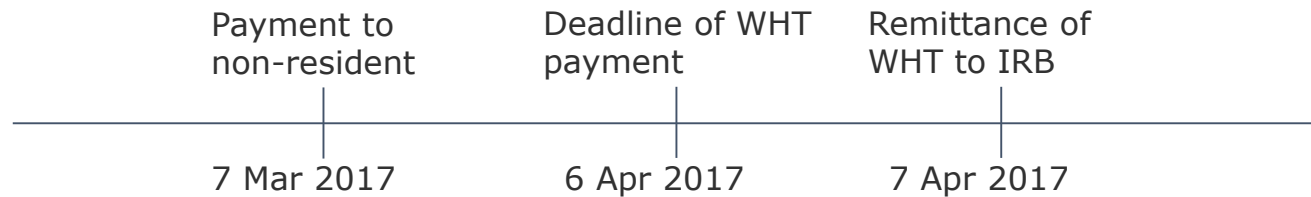
# Consequences of Non-Compliance

# Consequences of Non-Compliance

We reiterate, although WHT is the settlement of the non-resident's tax liability, the law imposes duty to withhold on the **payer**. The law also specifically penalise the **payer** in the event of non-compliance.

1. Late payment penalty of 10% on amount of WHT unpaid;
2. Outstanding WHT plus 10% penalty become debt due to the Government;
3. Expenses disallowed for tax deduction; and
4. Expenses disallowed for capital allowance claim (if WHT on cost of installation or operation is not paid).

# Non-Compliance – Example 1 – Late Payment of WHT



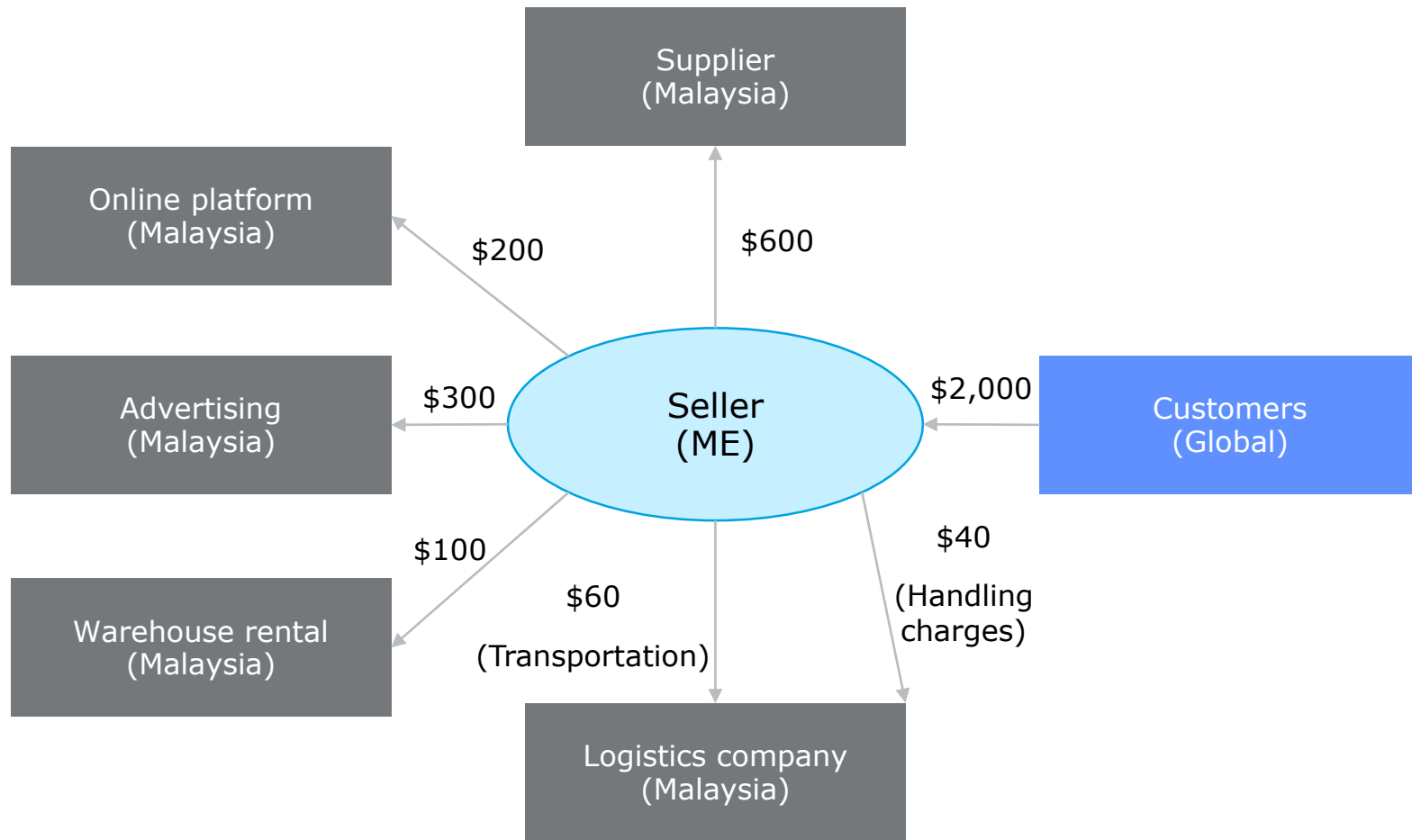
- Overlook Sdn Bhd closes its account on 31 December.
- In January 2017, it entered into a contract with a non-resident supplier whereby it rendered technical services in Malaysia.
- The project concluded in February 2017. Simultaneously, an invoice for RM200,000 was issued by the non-resident supplier.
- There is no dispute in the quality of the service rendered and payment was made on 7 March 2017.
- WHT was deducted at the correct rate of 10% but remitted to the IRB on 7 April 2017.
- As the deadline for WHT remittance is 6 April 2017, the above is tantamount to late payment of WHT. It will be liable to 10% penalty [i.e. (RM200,000 x 10%) x 10%].

**Taxation issues**

**Examples**

# Taxation issues

## Example 1 – Online trading of goods





# Taxation issues

## Example 1 – Online trading of goods (cont'd)

### Income Tax

	\$
Income	2,000
Less : Expenses	(1,300)
	<hr/>
Profit	700
	<hr/>

Taxed at 17%/24% (for company) or at scaled rates (for individual).

### Withholding Tax

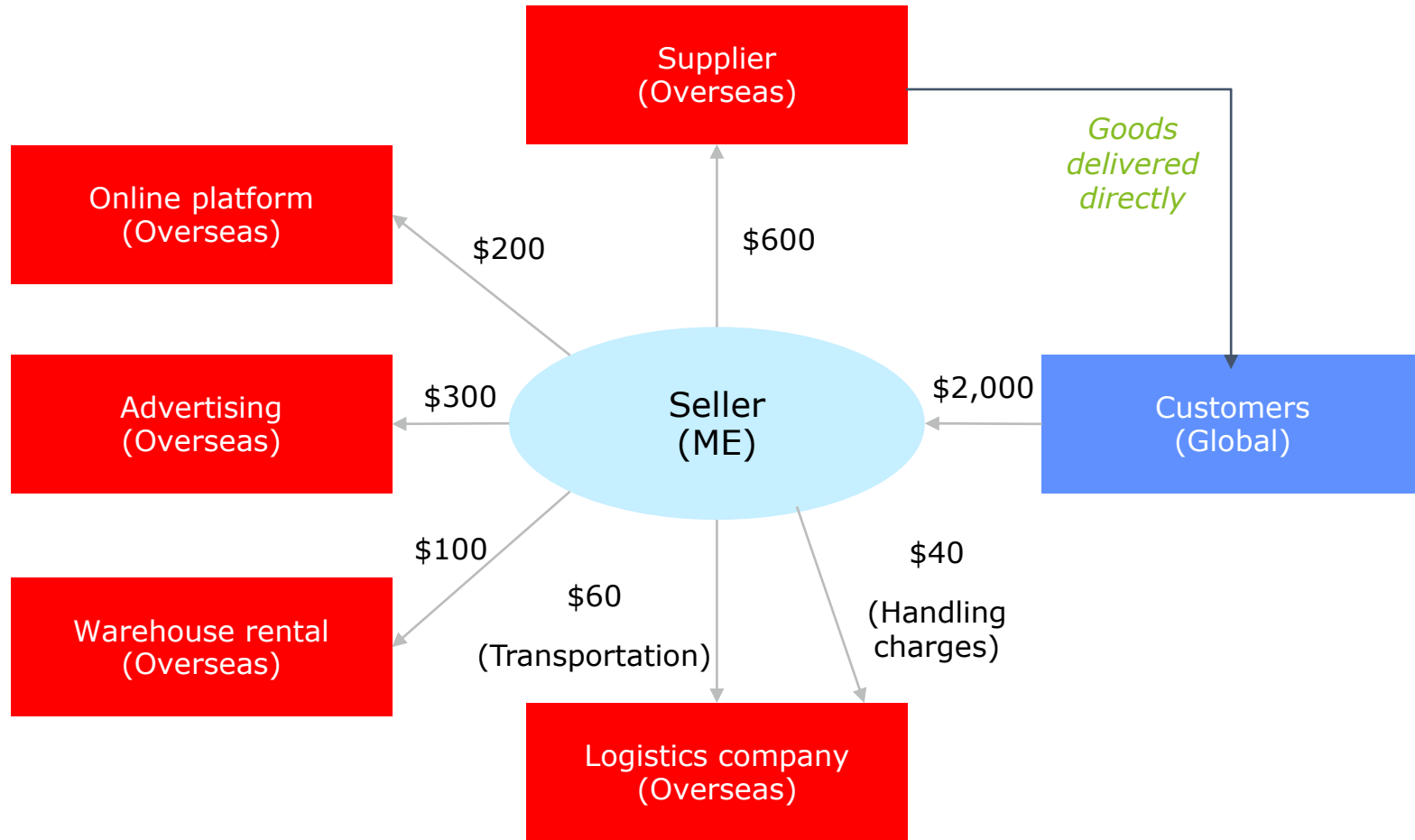
- None (payments to residents).

### Indirect Tax

- None (sales and service tax will be charged by supplier/vendors if registered)
- Logistics company – 6%?

# Taxation issues

## Example 2 – Online trading of goods



# Taxation issues

## Example 2 – Online trading of goods (cont'd)

### Income Tax

	\$
Income	2,000
Less : Expenses	(1,300)
	<hr/>
Profit	700
	<hr/>

Taxed at 17%/24% (for company) or at scaled rates (for individual).

### Withholding Tax

- Online platform (S109 – Royalty):  $\$200 \times 10\% = \$20$
- Advertising (S109 – Royalty / S109B - Service):  $\$300 \times 10\% = \$30$  ; (S 109B – Services performed outside Malaysia) : \$ 0 ??
- Logistics company (For handling charges portion: S109B - Service):  $\$40 \times 10\% = \$4$

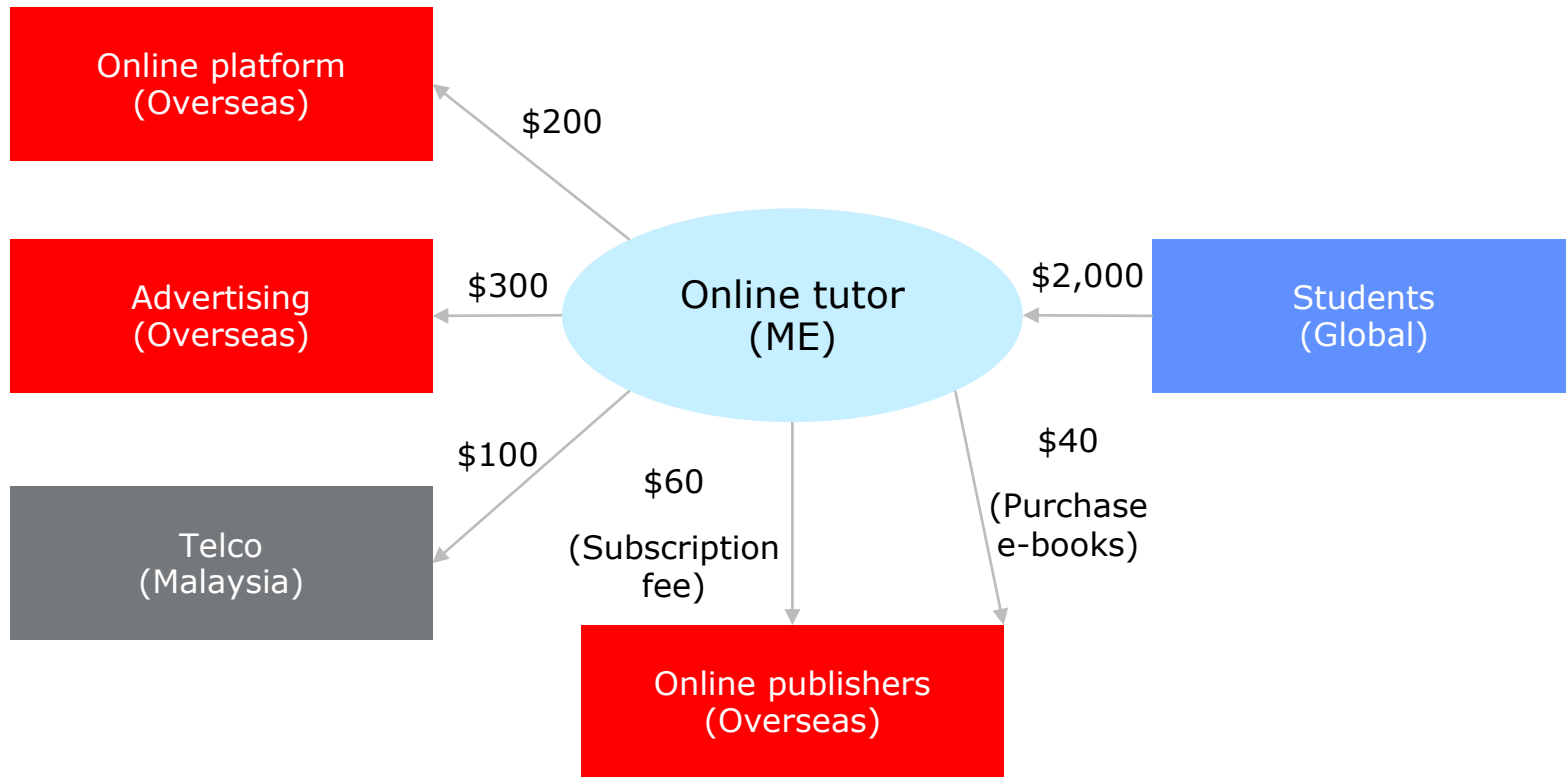
\* Assume treaty rates are not applicable.

### Indirect Tax

- Non – if goods **did not entered** Malaysia
- If **goods entered** Malaysia
  1. Sales tax: 0% / 5% / 10% on imported goods
  2. Import duty: 0% to 35% (up to 60% for certain cases) on imported goods
  3. Service tax (reverse charge):
    - Online platform – 6%
    - Advertising – 6%

# Taxation issues

## Example 3 – Online services



# Taxation issues

## Example 3 – Online services (cont'd)

### Income Tax

	\$
Income	2,000
Less : Expenses	(700)
	<hr/>
Profit	1,300
	<hr/>

Taxed at 17%/24% (for company) or at scaled rates (for individual).

### Withholding Tax

- Online platform (S109 – Royalty):  $\$200 \times 10\% = \$20$
- Advertising (S109 – Royalty ):  $\$300 \times 10\% = \$30$ ; (S 109B – Services performed outside Malaysia) : \$ 0 ??
- Online publishers (For subscription fee: S109 – Royalty):  $\$60 \times 10\% = \$6$
- If the business suffered withholding tax in a foreign country - Where an income is chargeable to tax in Malaysia as well as in a foreign country, a relief shall be given by way of credit known as bilateral credit (where a relevant tax treaty is applicable) in accordance with Section 132 of ITA 1967.

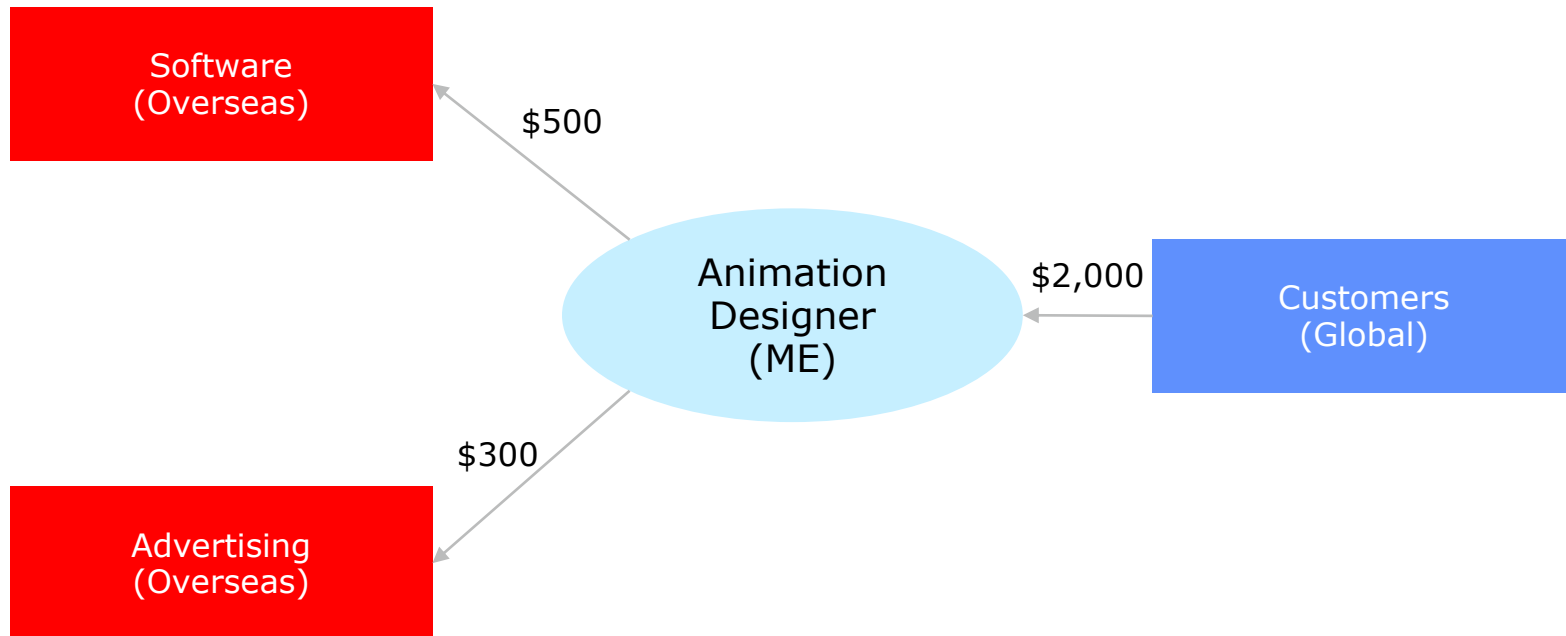
\* Assume treaty rates are not applicable.

### Indirect Tax

- Service tax to customer – 6% (if liable to register and charge service tax i.e. value of taxable service reaches RM500,000).
- Service tax (reverse charge) of 6% may be applicable to:-
  - Online platform
  - Advertising
  - Online publisher

# Taxation issues

## Example 4 – Online services



# Taxation issues

## Example 4 – Online services (cont'd)

### Income Tax

	\$
Income	2,000
Less : Expenses	(800)
	<hr/>
Profit	<u>1,200</u>

Taxed at 17%/24% (for company) or at scaled rates (for individual).

### Withholding Tax

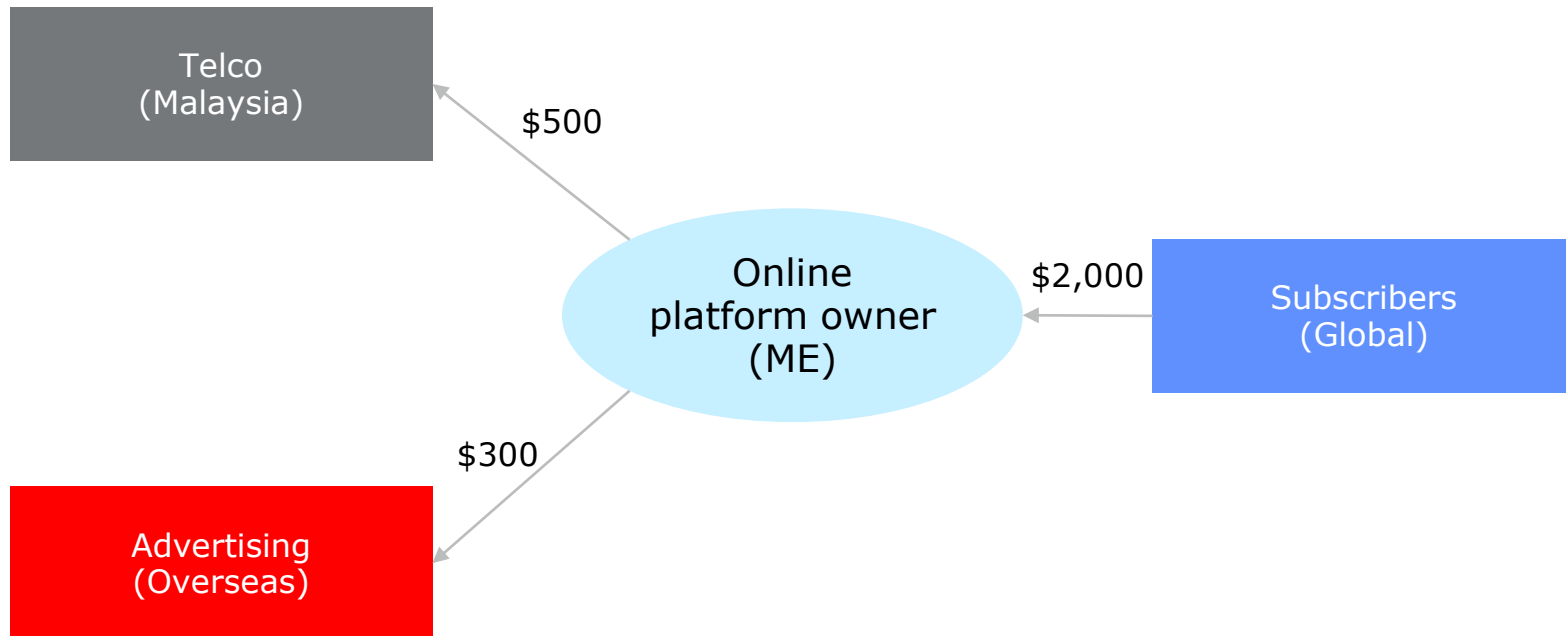
- Software licence/subscription (S109 – Royalty):  $\$500 \times 10\% = \$50$
- Advertising (S109 – Royalty / S109B - Service):  $\$300 \times 10\% = \$30$  (S 109B – Services performed outside Malaysia) : \$ 0 ??
- If the business suffered withholding tax in a foreign country - Where an income is chargeable to tax in Malaysia as well as in a foreign country, a relief shall be given by way of credit known as bilateral credit (where a relevant tax treaty is applicable) in accordance with Section 132 of ITA 1967.

### Indirect Tax

- Service tax to customer – 6% (if liable to register and charge service tax i.e. value of taxable service reaches RM500,000).
- Service tax may be applicable (reverse charge):
  - Software (assume vendor is the developer) – 6%
  - Advertising – 6%

# Taxation issues

## Example 5 – Online services





# Taxation issues

## Example 5 – Online services (cont'd)

### Income Tax

	\$
Income	2,000
Less : Expenses	(800)
	<hr/>
Profit	<u>1,200</u>

Taxed at 17%/24% (for company) or at scaled rates (for individual).

### Withholding Tax

- Advertising (S109 – Royalty / S109B - Service):  $\$300 \times 10\% = \$30$ ; (S 109B – Services performed outside Malaysia) : \$ 0 ??
- If the business suffered withholding tax in a foreign country - Where an income is chargeable to tax in Malaysia as well as in a foreign country, a relief shall be given by way of credit known as bilateral credit (where a relevant tax treaty is applicable) in accordance with Section 132 of ITA 1967.

### Indirect Tax

- Service tax to subscriber – 6% (if liable to register and charge service tax i.e. value of taxable service reaches RM500,000).
- Service tax may be applicable (reverse charge): Advertising – 6%.

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