



**An Overview of the
Nigerian Withholding
Tax Regulations of 2024**



In the exercise of his powers under the various income tax laws, the Minister of Finance and Coordinating Minister of the Economy (the "Minister") issued the Deduction of Tax at Source (Withholding) Regulations 2024 (the "Regulations") dated June 2024. The Regulations, which have a commencement date of 1st July, 2024, became generally available to the public on 2nd July, 2024. The Regulations supersede the previously existing deduction of tax at source regulations. The Regulations provide for the rules that apply to the deduction of taxes (at source) from payments to taxable individuals and companies under the Companies Income Tax Act 2004 (as amended), the Petroleum Profits Tax Act 2004 (as amended) and the Personal Income Tax Act 2004 (as amended) ("PITA") in relation to the transactions specified under applicable laws and the Regulations. We have highlighted in this tax update some of the key provisions of the Regulations and their implications.

Persons liable to deduct tax at source

Persons empowered to deduct tax at source on eligible transactions/payments include corporate and unincorporated entities, government ministries, agencies and institutions and statutory bodies, other institutions and enterprises (including those exempted from tax) and; a payment agent on behalf of any of these entities. Small companies (that is, companies with annual turnover below NGN25 million) and unincorporated entities of similar attributes are not permitted to deduct tax at source from any transaction if the (a) supplier/recipient has a valid tax identification number ("TIN"); and (b) value of the transaction is NGN2 million or less in the relevant month. This is aimed at reducing the compliance obligation on small companies. Where these conditions are not met, the small company/unincorporated entity making the payment will need to deduct the tax at the applicable rate and remit the amount deducted to the relevant tax authority ("RTA"). Individuals are not permitted to deduct tax.

Deducted amount at source is not a separate tax

Deduction made on any eligible payment shall neither be an additional tax nor an additional cost for the contract or transaction. It shall be treated by the supplier/recipient as an advance payment of income tax or the final tax as the case may be. This appears to be aimed at preventing the shifting of the tax burden to the recipient of an income on which tax is required to be withheld and remitted to the RTA.

Time for deduction at source

WHT deductions shall be made when the payment is made or when the amount due is settled, whichever is earlier. For related parties transactions, however, deduction shall be on the earlier of when the payment is made or the liability is recognised. Deduction from payment due to a non-resident recipient is the final tax, except where, other than in relation to interest, royalty, dividend and rent, the recipient of the income has a tax presence in Nigeria.



Remittance of the amount deducted to the RTA

The amount deducted at source is required to be remitted, in the case of amount due to the:

- (a) Federal Inland Revenue Service, not later than the 21st day of the month following the month of the payment; and
- (b) relevant State Internal Revenue Service, not later than the 30th day of the month following the month of the payment. In the case of deductions in respect of pay as you earn or capital gains tax, not later than the 10th day of the month following the month of the payment. Remittances to the RTA shall be accompanied by detailed information relating to the transaction and the recipient.

Deduction at source to be receipted

The Regulations require a person making a tax deduction from any payment to issue a tax receipt to the supplier/recipient for the amount withheld upon remittance of the tax to the RTA . Such a receipt is required to contain details about the recipient/supplier, including name, address, TIN, nature of the transaction, gross amount, the amount deducted and payment month. The supplier/recipient will be granted credit by the RTA following the presentation of the receipt. This is irrespective of whether or not the person who made the deduction has remitted the amount of tax withheld to the RTA . The unremitted amount shall be treated as the tax liability of the person who made the deduction, and the amount shall be recoverable from that person with applicable penalty and interest. This is aimed at enhancing the ease of obtaining and utilising withholding tax (“WHT”) credits by taxpayers.

Eligible transactions for deduction at source and WHT rates

The First Schedule to the Regulations provides for the transactions that are liable to WHT and the applicable rate. While the Minister retained the rates set out in the enabling statutes except directors fees, which he increased, he retained some of the rates and reduced others as set out in the repealed regulations. The Minister also included new categories of transactions. The transactions and applicable rates are as follows:

- (a) WHT rate on dividend, interest, rent, and royalty (corporates) remains at 10%. Royalty payment to individuals (resident or non-resident) remains at 5%.
- (b) Commission, management, technical, consultancy, and professional fees now attract a 5% WHT rate for resident recipients, and 10% for non-resident recipients which shall be the final tax.
- (c) Contracts for the supply of goods or materials now attract a 2% WHT rate for suppliers, excluding supplies made by the manufacturers or producers, which shall not be liable to WHT.



- (d) Payments for co-location and tower services now attract a 2% WHT rate for resident recipients, and 5% for non-resident recipients.
- (e) Contract sums for the construction of roads, buildings, power plants and bridges now attract a 2% WHT rate for resident recipients, and 5% for non-resident recipients.
- (f) Contract sum for any other form of construction or related activities now attracts a 5% WHT rate for resident recipients and 10% for non-resident recipients.
- (g) Brokerage fees now attract a 5% WHT rate for resident recipients and 10% for non-resident recipients.
- (h) Director's fee now attracts a 15% WHT rate for resident recipients, and 20% for non-resident recipients. This is against the rate of 10% as prescribed by section 72(2) of the PITA. The section neither gives the Minister the power to alter the rate nor differentiate between resident directors and non-resident directors. The Minister's power under section 73(6) of the PITA to make regulations does not give him any power to (a) alter the WHT tax rate applicable to director's fees; and (b) differentiate between resident directors and non-resident directors. Consequently, the Minister acted in excess of his powers in increasing the statutorily prescribed rate and differentiating between resident and non-resident directors.
- (i) Amount earned by non-resident entertainers and sportspersons in Nigeria is liable to deduction at the rate of 15%.
- (j) Winnings from lottery, gaming, and reality show attract 5% WHT rate for resident recipients, and 15% for non-resident recipients. Unlike other changes that come into effect on 1st July, 2024, this shall come into effect from 1st October, 2024.
- (k) Payment for the supply or rendering of services other than those specifically listed in the Regulations attract 2% WHT rate for resident recipients, and 5% for non-resident recipients.
- (l) Compensation for loss of employment is liable to deduction of capital gains tax at the rate of 10% for resident and non-resident recipients. This is pursuant to section 36 of the Capital Gains Tax Act 2004 (as amended).

Transactions exempted from WHT deduction at source

The Regulations clarified the transactions that are exempted from WHT based on the extant tax laws. The transactions are:

- (i) compensating payments under a registered securities lending transaction;
- (ii) distribution or dividend payment to a real estate investment trust or real estate investment company;



- (iii) across-the-counter transactions (that is, transactions between parties with no prior established contractual relationship or formal contract and payment is made instantly either in cash or by transfer);
- (iv) interest and fees paid to a Nigerian bank by way of direct debit of the funds which are domiciled with the bank (this informal practice of the FIRS has now been recognised in the Regulations);
- (v) goods manufactured or materials produced by the person making the supply, etc.

Other exempted transactions are:

- (i) imported goods where the transaction does not create a taxable presence for the foreign supplier (that is, if the transaction creates a taxable presence, WHT will apply);
- (ii) any payment in respect of income or profit which is exempt from tax;
- (iii) out-of-pocket expense normally incurred by the supplier and is distinguishable from the contract fees;
- (iv) insurance premium;
- (v) supply of liquified petroleum gas, compressed natural gas, premium motor spirit, automotive gas oil, low pour fuel oil, dual purpose kerosene and jet-A1;
- (vi) commission retained by a broker from monies collected on behalf of the principal in line with the industry norm for such transactions; and
- (vii) winnings from a game of chance or a reality show with contents designed exclusively to promote entrepreneurship, academics, technological or scientific innovation.

The Regulations reiterate that an exemption from WHT as set out therein does not mean that the income is exempt from the relevant income tax, except where the income is also exempted from tax under the enabling statute.

Penalties and offences

Failure to deduct tax, or to remit the deducted tax, continues to attract the penalties and interest as stipulated in the relevant statute. In addition, where a person with an obligation to deduct fails to deduct but pays a portion representing the deduction to the recipient (that is, making payment in full to the recipient), that person will be liable to an administrative penalty and a one-off annual interest on the amount not deducted.

In order to discourage tax evasion, in cases regarding the supply of goods, rendering of service or any eligible transaction involving non-passive income, the amount to be deducted at source shall be twice

the standard WHT rate if the recipient does not have a TIN. This is aimed at ensuring that all suppliers of goods and services are registered with the RTA and obtain a TIN.

Conclusion

The Regulations introduced changes that aim to benefit businesses with narrow profit margins through reduced WHT rates and limited exemption of small businesses from WHT obligations. It represents a good step towards the ease of doing business and fostering a business-friendly environment for companies operating in Nigeria. Non-resident entities will, however, be subject to higher WHT rates in respect of some payments and reductions in some others. The Regulations will also enhance the ease with which companies are able to utilise their WHT credit to set off against their tax liabilities. The process of utilisation has been simplified which could encourage compliance by businesses operating in the country. The Regulations are, however, released to the public at the same time as its commencement date. This will make immediate compliance and application of its provisions difficult for many taxpayers. As a result, the implementation of the changes may be slow.

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