



# HIGHLIGHT OF THE NEW DEDUCTION OF TAX AT SOURCE (WITHHOLDING) REGULATIONS 2024

## INTRODUCTION

Withholding Tax (WHT) is an advance payment of income tax and is deductible at source on payments made for certain transactions. It serves as a tax credit and can be used to offset future income tax liabilities. Therefore, it is not another form of tax.

### I. Key Changes and Benefits for Businesses under the Regulations

- **Eligible Transaction and Applicable Rate:**

The regulation specifies the eligible transactions and applicable rates for corporate resident and non-resident recipients as well as for non-corporate resident and non-resident recipients.

- **Clear Unified Rules Guiding WHT Implementation**

Introduction of a simplified and unified WHT regime for capital gains tax, companies' income tax, petroleum profits tax, and personal income tax with compensation for loss of employment.

- **Exemption of Small and Medium Enterprises (SMEs) and Farmers from WHT Compliance**

The new Regulations exempts small companies (companies with annual gross turnover below ₦ 25 million) and unincorporated bodies (business which is privately owned by one person) from the requirements to deduct WHT from any transaction, provided however that the value of the transaction during the relevant calendar month, is not above Two Million Naira and the supplier they are dealing with has a valid Tax Identification Number (TIN).

- **WHT to Function as an Advance Tax Payment and not an Additional Contract Cost**

While it is common practice for contracting parties to adjust negotiated contract price upwards to account for anticipated WHT deductions, in a bid to shift the burden of WHT payment to the other party to the contract (i.e. Gross Up provisions in contracts), the regulations now expressly state that a WHT payment should not be treated as an additional cost of a contract or transaction and therefore should not be included in the contract price as an additional cost.

- Improved Utilization of Tax Credits

Section 6(3) of the regulations now permit tax beneficiaries to claim WHT tax credits through receipts issued by tax agents, regardless of whether the agents have remitted the deducted amounts. These unremitted amounts become the tax liability of the agents and are recoverable with applicable penalties and interest.

- Ease compliance

The new regulations reduced withholding rates for businesses with low margins and a simplified compliance procedure which should ease the strain on the working capital and productivity of small and medium scale enterprises.

## **II. Exempted Transactions from WHT Deduction at source**

- Goods manufactured or materials produced by the person making the supply.
- The Regulations define manufacturing/production to include the production of energy, including Electricity, Gas and Petroleum products.
- Across the Counter Transactions, i.e. transactions carried out between parties without established or prior contractual relationship and in which payment is made on the spot.
- Interest and fees paid to a Nigerian bank by way of direct debits (an arrangement made with a bank that allows a third party to transfer money from a person's account on agreed dates ) to accounts in the banks.
- Out-of-pocket expenses normally expected to be incurred by the supplier distinguishable from contract fees.
- Insurance Premium
- Supply of Liquefied Petroleum Gas, Compressed Natural Gas (CNG), Premium Motor Spirits (PMS), Automotive Gas Oil (AGO), Low Pour Fuel Oil (LPFO), Dual Purpose Kerosene (DPK) and JET-A1.
- Commission retained by broker from monies collected on behalf of principal in line with the industry norm for such transactions.
- Winnings from a game of chance or a reality show with contents designed exclusively to promote entrepreneurship, academics, technological or scientific innovation.

## **III. Clarification on Persons Required to Deduct at Source**

The Regulations introduce a single, clear list of entities required to deduct WHT explicitly excluding individuals. They are:

- A body, corporate or unincorporate, other than an individuals
- Government, Government Ministry, Department or Agency
- A statutory body
- Public authority
- Any other Institution, organization, establishment and enterprises excluding those exempts from tax
- A Payment agent on behalf of those listed above.

## **IV. OFFENSES**

The regulation makes it an offence where:

- A person responsible for making deductions at source or who has deducted but fails to pay the relevant tax authority before the deadline commits an offence and shall, upon conviction, be liable to pay the tax withheld or not remitted in addition to a penalty of 10 percent of the tax withheld or not remitted plus interest at the prevailing Central Bank of Nigeria minimum rediscount rate
- A person required to deduct at source but has failed to do so and pays a portion representing the required deduction to the recipient. Only an administrative penalty and one-off annual interest on the amount not deducted shall be due and payable.
- A person has deducted the amount at source and failed to remit such amount to the relevant Tax Authority, the amount so deducted in addition to an administrative penalty and annual interest shall be payable.

## **V. DEDUCTION TO BE RECEIPTED**

This is meant to simplify the process of obtaining and utilizing WHT credit. Based on the Regulation, the tax authorities will no longer insist on the remittance of WHT deductions before issuing credit notes as confirmation that deduction has been made. Receipts issued by the deducting party to the beneficiary will be considered sufficient for the issuance of WHT credit notes. The amount unremitted will be treated as the tax liability of the person who made the deduction.

## **VI. Timing of Obligation**

The obligation to deduct WHT arises at the earlier of when the payment for a transaction is made or when the amount due is settled.

## **VII. When to Remit WHT**

The timelines for payment of WHT remain the same as under the previous WHT Regulations (i.e. 21st of the following month for payments to the Federal Inland Revenue Service (FIRS), and 30th of the following month for payments to the relevant State Internal Revenue Service (SIRS). Additionally, the Regulations clarify that Capital Gains Tax (CGT) deducted on payments to individuals should be paid to the relevant SIRS by the 10th of the following month, similar to income tax paid through the PAYE Scheme.

## VIII. Eligible Transactions and Applicable Rates

The new WHT Regulations specifies the eligible transactions and the applicable WHT rates for corporate and non-corporate beneficiaries including residents and non-residents as given below:

| ELIGIBLE TRANSACTIONS AND APPLICABLE RATES  |                      |               |                          |               |   |
|---|----------------------|---------------|--------------------------|---------------|---|
| Transactions  | CORPORATE RECIPIENTS |               | NON-CORPORATE RECIPIENTS |               | Remarks   |
|   | Residents            | Non-Residents | Residents                | Non-Residents |   |
| Dividend, Interest  | 10%                  | 10%           | 10%                      | 10%           | Rates as specified by the law                                 |
| Royalty   | 10%                  | 10%           | 5%                       | 5%            | Rates as specified by the law                                 |
| Rent, Hire or Lease   | 10%                  | 10%           | 10%                      | 10%           | Rates as specified by the law                                 |
| Commission, Consultancy, Technical, Management and Professional fees                  | 5%                   | 10%           | 5%                       | 10%           | Higher rates for non-residents to serve as tax                |
| Supply of goods or materials other than the manufacturer or producer                  | 2%                   | N/A           | 2%                       | N/A           | Simplified description and reduced rate to address low margin |
| Co-location and telecommunication tower services                                      | 2%                   | 5%            | 2%                       | 5%            | Lower rate to reflect low industry margin                     |
| Supply or rendering of services other than those specifically listed in this schedule | 2%                   | 5%            | 2%                       | 5%            | Simplified description and reduced rate                       |
| Construction of roads, bridges, buildings and power plants                            | 2%                   | 5%            | 2%                       | 5%            | Further rate reduction to reflect lower margin                |
| Any other form of construction and related activities                                 | 5%                   | 10%           | 5%                       | 10%           | Amount due for non-residents is final                         |
| Brokage fee   | 5%                   | 10%           | 5%                       | 10%           | Subject to Para 7 (11)  |
| Director's fee  | N/A                  | N/A           | 15%                      | 20%           | Rate reflects marginal PIT rate for directors                 |
| Compensation for loss of employment   | N/A                  | N/A           | 10%                      | 10%           | Section 36 of the CGT Act                                     |
| Entertainers and sportspersons  | N/A                  | 15%           | N/A                      | 15%           | Applies on amount earned in Nigeria                           |
| Winnings from lottery, gaming, reality shows, etc.                                    | N/A                  | N/A           | 5%                       | 15%           | With effect from 1st of October, 2024                         |

It is important to highlight that the applicable WHT rate for certain transactions in industries and sectors with low margins has been reviewed downwards as highlighted in the table above.

## IX. Conclusion

The new Deduction of Tax at Source (Withholding Tax) Regulations 2024, represent a significant step forward for the tax authorities to address long-standing challenges faced by businesses in Nigeria, as it will aid the means of doing business, strengthen tax compliance, and reduce arbitrage between corporate and non-corporate Businesses. We expect that the implementation of these Regulations will foster a more business-friendly environment, allowing businesses to thrive in Nigeria.

## Contacts



**Olapeju Sofowora**  
Tax Partner

[psowofora@abax-oosa.com](mailto:psowofora@abax-oosa.com)  
+234 803 306 5785



**Anthony Ebele**  
Head of Tax

[aebele@abax-oosa.com](mailto:aebele@abax-oosa.com)  
+234 905 114 0967



**Jamiu Ajayi**  
Tax Professional

[jajayi@abax-oosa.com](mailto:jajayi@abax-oosa.com)  
+234 814 555 4470

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