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Institute of Certified Public Accountants of Kenya (ICPAK)

Tax Training

Not For Profit Organizations

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Withholding tax (WHT)



WITHHOLDING TAX

What we shall cover

- **Overview of WHT**
- **WHT rates and administrative procedures**
- **Non-compliance with WHT rules and regulations**
- **Applicability for NPO**

Introduction

What is WHT?

- Tax deducted **at source** on payments to both resident and non-resident persons on income from various sources
- Depending on the income stream WHT can either be a final tax or an advance tax payment
- WHT is governed by Income Tax Act - Section 35 and WHT Rules, 2001
- Why withhold?

Introduction (Cont'd)

- WHT is deductible upon payment of a taxable amount
- The Tax Point :“Paid” is defined to include **crediting** (i.e. accrual) of the amount payable in the books
- The NPO's should account for WHT on the earlier of the date of accrual or the date of payment
- Disbursements (not supported/non-third party) are subject to WHT

Obligations under WHT regime

Responsibilities of the person making payment of income subject to WHT to:

- Compute and deduct WHT at the relevant rate;
- Remit WHT so deducted by the 20th day of the month following that in which tax is deducted;
- Maintain relevant records

Obligations under WHT regime

- **Submit an end-of-year WHT return by the 28th day of February the following year (irrespective of financial year-end); and**
- **Provide a WHT certificate to the Payee - showing gross amount and WHT so deducted...iTax impact**

Payments subject to WHT

- **Management, technical and professional fees**
- **Dividends**
- **Royalties**
- **Interest**
- **Deemed interest**

Payments subject to WHT

- **Withdrawals from a provident fund or pension annuities**
- **Winnings from betting and gaming**
- **Payments made to non-residents for the use or occupation of property**
- **Telecommunication services**
- **Commission from insurance companies**

Consequences of non-compliance

- Late payment penalty of **10%** (capped at **1 Million**)
- Interest at **2%** per month on the outstanding tax, until payment in full is made
- Other WHT general offences - failure to submit return (up to a maximum of fine **KShs 100,00** or six months imprisonment or both)
- *W.e.f* 13 June 2008 - ***In duplum*** rule applies to interest on tax due

Payments by pension/ provident schemes

- **Unregistered schemes - no further tax is deductible on withdrawals**
- **Registered schemes:**
 - Withdrawals are subject to WHT
 - WHT ordinarily deductible at PAYE rates
 - Wider brackets may apply



Withholding Tax Rates

WHT rates - payments to residents

Nature of payment	Rate
Management or professional fees: (>24,000) - Managerial, technical, agency, consultancy fees, and training fees w.e.f 11 June 2011 to 2 May 2012 - 10% (Finance Bill, 2011)	5%
Contractual fees:(>24,000) - Building, civil and engineering works	3%
Royalties: - E.g. Oracle computer software	5%

WHT rates - payments to residents

Nature of payment	Rate
Interest:	
■ Bank interest and other sources	15%
■ Bearer instruments:	
- 2 years;	25%
- Beyond 10 years w.e.f 12.06.09	10%
Dividends:	5%
EA citizens (Uganda and Tanzania) are now considered Kenyan residents for purposes of WHT on dividends	

WHT rates - payments to non-residents

Nature of payment	Rate
Management or professional fees:	20%
Royalties - e.g. software licenses	20%
Dividends	10%
Interest	15%
Pensions and retirement annuities	5%
Rents (leases) for use or occupation of:	
- Movable property and cross border leases	15%
- Immovable property	30%

Double Taxation Agreements (DTAs)

Nature of payment	UK (%)	Germany & Canada (%)	Denmark Norway Sweden Zambia	India (%)	Mauritius & Iran (%)	France (%)
Management or professional fees	12.5	15	20	17.5	20	20
Royalties	15	15	20	20	10	10
Dividends	12.5	15	20	17.5	5	10
Interest	15	15	15	15	10	12
Pension	5	5	5	5	5	5
Entertainment sport and promotion	20	20	20	20	20	20
Rent(real estate)	30	30	30	30	30	30
Rent(Others	15	15	15	15	15	15

Withdrawal from Pensions Scheme

Special withdrawals (KShs)	Ordinary withdrawals (KShs)	Rate %
First 400,000	121,968	10%
Next 400,000	114,912	15%
Next 400,000	114,912	20%
Next 400,000	114,912	25%
Over 1.6 M	Over 466,704	30%

Applicability to NPOs

- **WHT is tax deducted at source on certain ‘qualifying’ payments**
- **WHT is deductible provided that the income (the subject of payment) is taxable**
- **NPOs are subject to WHT obligations to the extent that the income is taxable**

Reverse VAT



Reverse VAT

VAT on Imported Services (Reverse VAT)

- **Supply of imported services” means a supply of services that satisfies the following conditions:**
- is made by a non-registered person to a person who is a registered person;
- the supply would have been a taxable supply if it had been made in Kenya; and
- the registered person would not have been entitled to a **credit for the full amount of input tax** payable if the services had been acquired by the person in a taxable supply

VAT on Imported Services (Reverse VAT)

- Taxable services rendered by foreign suppliers are subject to 'reverse VAT'. This is payable by the **recipient** of the service
- The recipient need not be registered for VAT (similar to VAT paid on importation of goods)
- It is the recipient's responsibility to account for and pay the applicable VAT if they are not registered for VAT

VAT on Imported Services (Reverse VAT)

- Recipients registered for VAT are not required to account for reverse VAT - if entitled to a full deduction
- RVAT should be paid at the earlier of the date of supply, date of invoice and date of payment
- VAT on imported services is paid to the KRA through **Form VAT 28**

Donations



Not for profit organizations

- **A not for profit organization (NPO) is a type of organization that does not earn profits for its owners**
- **Funds earned or donated to a NPO are used in pursuance of the core objectives**
- **Examples - charitable organizations or public service organizations**

Not for profit organizations

- Generally NPOs are not taxable on the surplus income provided that they tax exempt
- The tax exempt status – need to have tax exemption certificate by the Commissioner in place
- Income from other sources other than donations or surplus from core activities (rent, interest, dividends) is taxable...**unless entity has a tax exemption certificate**

Tax Status of Corporate & private donors

Deductibility of the donations:

- **Donations to charitable organizations registered or exempt from registration under the Societies Act or**
- **NGO Coordination Act, 1990, and whose income is exempt from tax**

...are allowable expenses under Sec 15(2)(w) of the Income Tax Act

Tax Status of Corporate & private donors

- Under the ITA (Charitable Donations) Regs, (2007), a charitable organization to which a donation is made should be:
 - A NPO established in Kenya;
 - Of a public character;
 - Established for: Relief of poverty or distress of the public or advancement of education; and
- **The Charity should issue a certificate as proof of the donation**

Tax Status of Corporate & private donors

The donor is required to provide proof of the donation (a receipt issued and certified by the donee)

The donor must also provide:

- a) A copy of a tax exemption certificate issued by the Commissioner to the donee;
- b) A declaration from the donee that the donations shall be used exclusively for the objects of charity

Tax Status of Corporate & private donors

A comparative view:

- **Section 501(c)(3) Organizations in the US:**
 - Charitable objectives
 - Donations are tax-deductible. Evidence of donation required
 - Excess benefit transactions & excise duty thereon
- **UK Tax registered charities - tax breaks for donations**

Q & A Session



Thank you

Caveat

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