

Withholding Tax (WHT)

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What is WHT?

Withholding tax



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

Withholding tax





- 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 Fintel case, 2014
- Disbursements (not supported/non-third party) are subject to WHT

Why withhold?







More cost effective

Non-resident





Obligations under WHT Regime





Responsibility 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

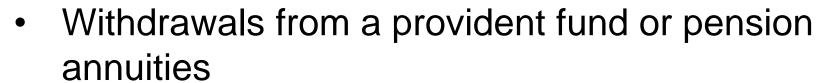




- Management, technical and professional fees
- Dividends
- Royalties
- Interest
- Deemed interest
- CGT?
- Telecommunication services

Payments subject to WHT





- Winnings from betting and gaming?
- Payments made to non-residents for the use or occupation of property
- Commission from insurance companies
- Deemed interest!





Consequences of noncompliance



- Late payment penalty of 10% (capped at 1 Million)
- Interest at 1% per month on the outstanding tax, until payment in full is made
- Other general offences under withholding tax e.g. failure to submit return (up to a maximum of fine KShs 100,000 or six months imprisonment or both)
- W.e.f 13 June 2008 In duplum rule applies to interest on tax due



WHT Rates

Resident WHT Rates



Nature of payment	Rate
Management or professional fees: (> KES 24,000)- Managerial, technical, agency, consultancy fees & training fees	5%
Contractual fees:(>24,000) - Building, civil and engineering works	3%
Royalties: - E.g. Oracle computer software	5%
Rental income	10%

Resident WHT Rates



Nature of payment	Rate
Interest:	
Bank interest and other sources	15%
Bearer instruments:- 2 years;- Beyond 10 years w.e.f 12.06.09	25% 10%
Dividends: EA citizens (Ug and Tz) are considered Kenyan residents for dividend WHT	5%

Non-Resident WHT Rates



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%

12.5

Management or

professional fees

Entertainment sport

and promotion

Rent (Others

Rent (real estate)

Royalties

Dividends

Interest

Pension



Non-Kes	1de1	nt Wh	II Kat	ces	C	PAK sold Public Interest
Nature of payment	UK	Germany &	Denmark Norway		UAE & Iran	France
	(%)	Canada (%)	Sweden Zambia	(%)	(%)	(%)

10/5

Non-Resident WHT Rates – Newer rates



Nature of payment	New India (%)	Old India (%)	Qatar (%)	South Korea (%)
Management or professional fees	12.5	17.5	*	*
Royalties	15	20	10	10
Dividends	10	10	10/5	10/8
Interest	15	15	10	12
Pension	5	5	5	5
Entertainment sport and promotion	20	20	20	20
Rent (real estate)	30	30	30	30
Rent(Others	15	15	15	15



DTA's

DTAs





- Kenya has 48 DTAs at various stages (see http://www.treasury.go.ke/avoidance-of-double-taxation.html)
- 14 DTAs in force
- Recent DTAs:
- Kenya-Qatar 1.1.2016
- Kenya-South Korea 1.1.2018
- Kenya-India (Revised) 1.1.2018

DTA Status



Country	Status	Effective Date	Country	Status	Effective Date
Algeria	U/consideration	-	Germany	In force	1.1.1980
Belgium	U/negotiation	-	Ghana	U/consideration	-
Botswana	Concluded (NS)	-	India	In force (new)	1.1.2018
Cameroon	U/consideration	-	Iran	In force	1.1.2018
Canada	In force	1.1.1988	Italy	Signed (NIF)	-
China	Signed (NIF)	-	Ivory Coast	U/consideration	-
Denmark	In force	1.1.974	Japan	U/negotiation	-
DRC	U/consideration	-	Jordan	U/consideration	-
EAC	Signed (NIF)	-	Korea	In force	1.1.2018
Egypt	U/Negotiation	-	Kuwait	Signed (NIF)	-
Ethiopia	U/Consideration	-	Macedonia	U/consideration	-
France	In force	1.1.2011	Malawi	U/consideration	-

DTA Status



Country	Status	Effective Date	Country	Status	Effective Date
Malaysia	U/negotiation	-	Singapore	Concluded (NS)	-
Mauritius	Signed (NIF)	-	South Africa	In force	1.1.2015
Mozambique	U/consideration	-	South Sudan	U/consideration	-
Netherlands	Signed (NIF)	-	Spain	U/negotiation	-
Nigeria	Concluded (NS)	-	Sudan	U/consideration	-
Norway	In force	1.1.1974	Sweden	In force	1.1.1974
Portugal	Concluded (NS)		Thailand	Concluded (NS)	-
Qatar	In force	1.1.2016	Turkey	Concluded (NS)	-
Russia	U/consideration	-	UAE	In force	1.1.2018
Saudi Arabia	Concluded (NS)	-	UK	In force	1.1.1978
Senegal	U/consideration	-	Zambia	In force	1.1.1964
Seychelles	Signed (NIF)	-	Zimbabwe	U/consideration	-

INTERACTIVE SESSION



