

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

What is
WHT?



Why withhold?



- Cash flow to KRA
- Compliance issue
- More cost effective
- Non-resident

Why?



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**

My
duty?



Payments subject to WHT



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

Which ones?



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
- Commission from insurance companies
- **Deemed interest!**

Which ones?



Consequences of non-compliance



- 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;	25%
- Beyond 10 years w.e.f 12.06.09	10%
Dividends:	5%
EA citizens (Ug and Tz) are considered Kenyan residents for dividend WHT	

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%

Non-Resident WHT Rates



Nature of payment	UK (%)	Germany & Canada (%)	Denmark Norway Sweden Zambia	South Africa (%)	UAE & Iran (%)	France (%)
Management or professional fees	12.5	15	20	*	20	20
Royalties	15	15	20	10	10	10
Dividends	10	10	10	10/5	5	10
Interest	15	15	15	10	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

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
Algeria	U/consideration	-
Belgium	U/negotiation	-
Botswana	Concluded (NS)	-
Cameroon	U/consideration	-
Canada	In force	1.1.1988
China	Signed (NIF)	-
Denmark	In force	1.1.974
DRC	U/consideration	-
EAC	Signed (NIF)	-
Egypt	U/Negotiation	-
Ethiopia	U/Consideration	-
France	In force	1.1.2011

Country	Status	Effective Date
Germany	In force	1.1.1980
Ghana	U/consideration	-
India	In force (new)	1.1.2018
Iran	In force	1.1.2018
Italy	Signed (NIF)	-
Ivory Coast	U/consideration	-
Japan	U/negotiation	-
Jordan	U/consideration	-
Korea	In force	1.1.2018
Kuwait	Signed (NIF)	-
Macedonia	U/consideration	-
Malawi	U/consideration	-

DTA Status



Country	Status	Effective Date
Malaysia	U/negotiation	-
Mauritius	Signed (NIF)	-
Mozambique	U/consideration	-
Netherlands	Signed (NIF)	-
Nigeria	Concluded (NS)	-
Norway	In force	1.1.1974
Portugal	Concluded (NS)	
Qatar	In force	1.1.2016
Russia	U/consideration	-
Saudi Arabia	Concluded (NS)	-
Senegal	U/consideration	-
Seychelles	Signed (NIF)	-

Country	Status	Effective Date
Singapore	Concluded (NS)	-
South Africa	In force	1.1.2015
South Sudan	U/consideration	-
Spain	U/negotiation	-
Sudan	U/consideration	-
Sweden	In force	1.1.1974
Thailand	Concluded (NS)	-
Turkey	Concluded (NS)	-
UAE	In force	1.1.2018
UK	In force	1.1.1978
Zambia	In force	1.1.1964
Zimbabwe	U/consideration	-

INTERACTIVE SESSION

