

DOMESTIC TAXES DEPARTMENT

ICPAK's Tax Management for PBOs Workshop

WITHHOLDING INCOME TAX

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1. Introduction

Basis of Income Taxation

- Section 3 of the Income Tax Act (ITA) CAP 470
- Section 3(1) provides:
- ‘a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or derived from Kenya’.

Introduction Cont...

Basis of Income Taxation cont...

- Withholding tax is deducted on certain payments made to suppliers as listed in Section 35 of the Income Tax Act.
- The tax is charged under sections 3, 10 and 35 of the Income Tax Act

2. Types Of Income Chargeable To Withholding Tax

- Section 35 enumerates all the payments subject to withholding tax for both resident and non resident persons.

Types Of Income Chargeable To Withholding Tax Cont...

- *Non residents – Examples*
 - i. Management or professional fee
 - ii. Royalty of natural resource income
 - iii. Rent or premium for occupation of property
 - iv. Dividend
 - v. Interest and deemed interest
 - vi. Pension or retirement annuity
 - vii. Entertainment appearance or performance and activities supporting such.
 - viii. Winnings
 - ix. Transmitting messages

Types Of Income Chargeable To Withholding Tax Cont...

- *Residents – Examples*
 - i. Dividend
 - ii. Interest (exemption on interest paid to financial institutions)
 - iii. Insurance Commissions
 - iv. Pension
 - v. Management or professional fee - aggregated value of Kshs 24,000 or more per month.
 - vi. Royalty of natural resource income
 - vii. Winnings

3. Withholding Tax Rates

- ✓ Withholding tax rates are specified under paragraphs 3 and 5 of the third Schedule to the Income Tax Act for non residents and residents respectively.
- ✓ Different Rates are used for different categories of payments. e.g. Management fees - 5% for residents

4. Accounting for Withholding Tax

- Remitted on or by 20th day of the month succeeding the month deduction was made.
- iTax issues withholding certificates and keeps a record of all tax withheld by a withholding agent.
- The person suffering the withholding tax has to account for all the certificates received in a year of income when filing his annual return.
- Operation of Withholding Tax is specified under the income Tax (Withholding Tax) Rules 2001 as gazetted under Legal Notice number 100/2001

5. Employee vs. Consultant

- Key considerations for employees
 - Control/ independence
 - Nature of contract/ substance over form
 - Nature of activities
 - Entitlement to social welfare benefits e.g. leave
 - Economic reality – risk of financial loss
- Integration

6. Withholding Tax on Rent Income

- ✓ Imposed under Section 35(3)(j)
- ✓ Introduced by Finance Act 2016, w.e.f 1st Jan 2017
- ✓ Applied on both residential and commercial property.
- ✓ Withheld by Appointed Agents at 10% on Gross Rent
- ✓ Only rent received by Residents can be withheld
- ✓ Non-Resident Rent payable withheld at 30% under 3rd Schedule Paragraph 3(c)
- ✓ Accounted for by 20th of the Month
- ✓ Penalty for Non-compliance is 10% of tax due



Thank you!

A handwritten note on a piece of paper with a yellowish tint. The words "Thank you!" are written in a cursive, black ink. Above the word "you" is a simple smiley face drawn with a circle and two dots for eyes.

Any Questions!