

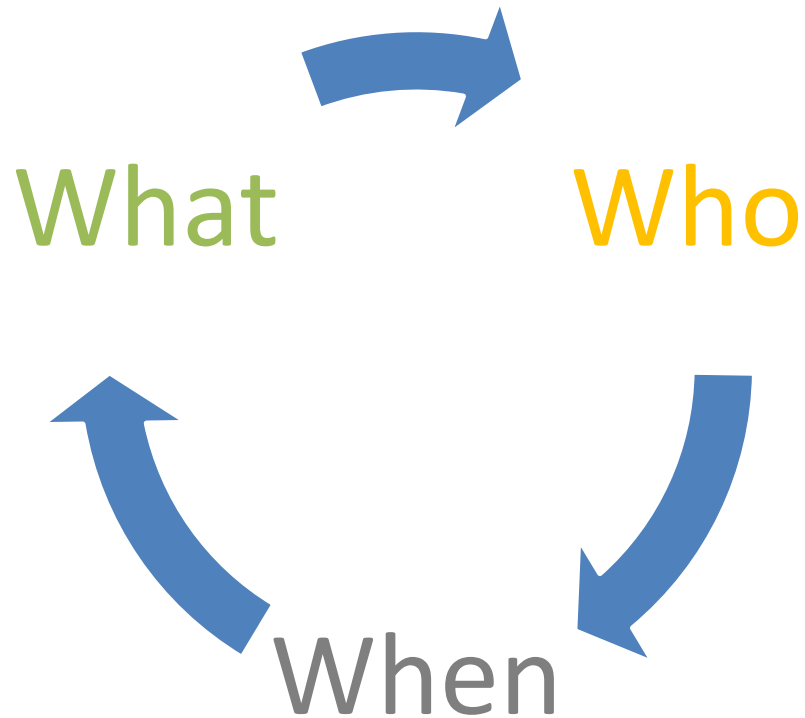
# Withholding Taxes and Recent Developments

Presentation by:

Mbiki Kamanjiri

Tax Consulting Manager  
RSM East Africa

# WHT Cycle



# Introduction



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Withholding tax” is deducted on specific payments in accordance with the provision of the Income Tax Act

- The payer acts as an **agent** for KRA
- Withholding tax is an advance tax but can be a final tax in other cases.

# Reason to Withhold



Cash flow to KRA

To effect compliance

Tax on non-residents

Efficient collection avenue

# Legal Provisions



## Section 3 – General charging section

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 was derived from Kenya

## Section 10 –

Where a resident person or a person having a permanent establishment in Kenya makes a payment to any other person in respect of, the specific payments the amount thereof shall be deemed to be income which accrued in or was derived from Kenya

## Section 35 (1) and (2)

A person shall, upon payment of an amount to a non-resident person not having a permanent establishment (in Kenya in respect of the specific payments  
Subject to subsection (3A), a person shall, upon payment of an amount to a person resident or having a permanent establishment in Kenya in respect of

# Legal Provisions



Management &  
Professional fees

Training fees

Contractual fees

Commission

Agency fees

Royalty

Dividend

Use of property  
(rent)

Interest &  
Deemed interest

# Resident rates



Income	Rate
Management or professional fees: (> KES 24,000) – payment made to a person, other than a payment made to an employee by his employer, as consideration for managerial, technical, agency contractual or consultancy services however calculated	5%
Contractual fees:(>24,000) - Building, civil and engineering works	3%
Contractual payments for work done in respect of building, civil or engineering work.	
Royalties	5%
a payment made as consideration for the use of or the right to use a) The copyright of a literary, artistic or scientific work; or cinematograph film, including film or tape for radio or television broadcasting; or b) A patent, trade mark, design or model, plan, formula or process; or c) Any industrial, commercial or scientific equipment; or for information concerning industrial, commercial or scientific equipment; or d) Experience, and gains derived from the sale or exchange of any right or property giving rise to that royalty	

# Resident rates



Income	Rate
Rental income	10%
Interest	15%
Dividends:	5%

WHT on rental income to be deducted only by appointed WHT agents

For purposes of WHT on dividends EA citizens (Ug and Tz) are considered Kenyan residents



# Non-Resident Rates



Income	Rate
Management and professional fees	20%
Royalties	20%
Dividends:	10%
Interest and deemed interest	15%
Rent : moveable property	15%
Immoveable property	30%
Pension and retirement annuities	5%

The rates above are subject to the various DTA provisions

**“deemed interest”** means an amount of interest equal to the average ninety-one day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non resident, where such loan is provided free of interest

# However Calculated



## Disbursements

- Transport
- Accommodation
- Printing and stationery
- etc

## Reimbursable



Gulf contested assessment where CIT computed WHT on incidental costs

Gulf African Bank vs CIT

# Computation of WHT



## XYZ Consulting

	KShs
Professional fees	100,000
Transport and accomodation	20,000
	<hr/>
	120,000
VAT @16%	19,200
	<hr/>
Total	<hr/> <hr/> 139,200

Deduct  $(120,000 \times 5\%) = \text{Kshs } 6,000$

Pay  $(114,000 + 19,200) = \text{Kshs } 133,200$

Where negotiated “net of tax”

Paid full 139,200 to XYZ

To KRA  $(120,000 \times 100/95) \times 5\% = \text{Kshs } 6,316$

# For the recipient of income



100

Professional, contractual, training, royalties, agency fees

5%

Withholding tax

70

Deductible expenses

30

$\times 30\%$

9

—

5

=

4

30<sup>th</sup> April

# Exemptions



- Persons listed in the First Schedule
- Interest income to Institutions in the Fourth Schedule
- Management professional fees below KES 24,000
- Dividend income paid to a non-resident investor into an SEZ
- DTA provisions
- Commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya.
- Commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel
- Payments by filming agents and filming producers approved by the Kenya Film Commission to non resident actors and crew members

# Tax point



WHT is deductible upon payment of a taxable amount

**"paid"** includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person

“Paid” is defined to include crediting (i.e. accrual) of the amount payable in the books – **The Fintel case**

# Payments Returns Due Dates



Due date

20th day of the month following the month of deduction

Penalty

10% of the amount subject  
to a maximum of KShs 1  
million

Interest

1% per month subject to  
In duplum rule

# Payments Returns Due Dates



WHT Cert

To be provided in prescribed form by the person making deduction

iTax

2015 August all certs to be issued on iTax  
S42 special credits

Period of  
claim

within a year of deduction



# Record keeping



The company should keep proper records on making payment of withholding tax. The records required to be maintained are in respect of:

- Name of Payee;
- Address of Payee;
- Personal Identification Number (PIN);
- Gross amount paid;
- Nature of payment; and
- Amount of tax deducted

# Tax planning opportunities



- Paying withholding tax due on time will save the company tax penalties
- Utilization of double tax treaties
- In house tax resource
- Annual Tax Health Checks and implementing tax consultant's advice
- Seeking tax advice before major business decisions
- Review agreements and contracts – integrate tax into all aspects of business
- Tax Training

# Finance Bill, 2019



- Security services
- Cleaning and fumigation
- Catering services offered outside hotel premises
- Transportation of goods (excluding air transport services) and
- Advertising services

Sales promotion

Marketing services

# Finance Act, 2019



S29 of The Finance Act 2019 introduced Section 39A in the TPA

“

Where a person who is required deduct under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld **as if it were tax due and payable by that person** and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

”

Effective 7<sup>th</sup> November 2019

# Challenges with WHT

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Refunds

Non-compliance

# Connect with us

**Mbiki Kamanjiri**

**Tax Consulting Manager**  
RSM East Africa

E: [mkamanjiri@ke.rsm-ea.com](mailto:mkamanjiri@ke.rsm-ea.com)  
T: **+254 721 449 468**

## NAIROBI

Tel: +254 20 3614000/4451747/8/9  
Mobile: +254 706 347950/772 786111  
Email: [info@ke.rsm-ea.com](mailto:info@ke.rsm-ea.com)  
Website: [www.rsm.global/kenya](http://www.rsm.global/kenya)

## DAR ES SALAAM

Tel: +255 22 2137314/15  
Email: [info@tz.rsm-ea.com](mailto:info@tz.rsm-ea.com)  
Website: [www.rsm.global/tanzania](http://www.rsm.global/tanzania)

## MOMBASA

Tel: +254 41 2311778/2312640  
Mobile: +254 707 613329  
Email: [infomsa@ke.rsm-ea.com](mailto:infomsa@ke.rsm-ea.com)  
Website: [www.rsm.global/kenya](http://www.rsm.global/kenya)

## KAMPALA

Tel: +256 414 342780  
Email: [info@ug.rsm-ea.com](mailto:info@ug.rsm-ea.com)  
Website: [www.rsm.global/uganda](http://www.rsm.global/uganda)



LinkedIn  
Company: **RSM Eastern Africa**



Instagram  
**@RSMEastAfrica**



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