

## INTRODUCTION

On the 1<sup>st</sup> of July 2004, The Federal Government of Nigeria announced a strategic move to redefine the withholding tax regime in Nigeria with a view to improving working capital retention for Resident Companies while enhancing its revenue generation and collection.

Through the Minister of Finance and Coordinating Minister of the Economy<sup>1</sup>, Mr. Wale Edun, the Federal Government introduced a new regulation on withholding tax titled "**Deduction of Tax at Source (Withholding) Regulations 2024.**"

The Regulation, effective from July 1, 2024, establishes a new regime for the deduction and remittance of withholding tax in Nigeria, superseding any previous regulations withholding tax in Nigeria. The Regulation applies to tax from payments to taxable persons under the Capital Gains Tax Act, Companies Income Tax (CIT) Act, Petroleum Profits Tax (PPT) Act, and the Personal Income Tax (PIT) Act.

## KEY FEATURES OF THE NEW REGULATION

### 1. Eligible Transactions and Rates

The new regulation has expanded the list of eligible transactions to include brokerage fees, compensation for loss of employment, entertainers and sportspersons, and winnings from lotteries, gaming, and reality shows.<sup>2</sup> In view of the introduction of withholding tax (WHT) rates for the gaming and lottery sector, the rate for winnings from lottery, gaming, and reality shows will take effect in Q4 of 2024<sup>3</sup> which will allow key stakeholders in the betting industry to align their invoicing and payment schedules with the new regulations.

The withholding tax rates now range from 2% to 20%, depending on the transaction, the recipient (whether corporate or non-corporate), and their residency status (resident or non-resident).<sup>4</sup> The introduction of residency status as a factor for determining WHT rates is a new addition of this regulation.

Here are some key changes to WHT rates for specific transactions-

- i. The WHT rate for Director's fees for Nigerian residents has increased from 10% to 15% and to 20% for non-residents.

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<sup>1</sup> The Minister of Finance has the power to make regulations on tax pursuant to Section 81 (9) of the Companies Income Tax Act, Section 56 of the Petroleum Profit Tax Act, Section 73(6) of the Personal Income Tax

<sup>2</sup> See the First Schedule of the Regulation

<sup>3</sup> October 1, 2024

<sup>4</sup> Ibid

- ii. The WHT rate for Nigerian residents for co-location and telecommunication services has been reduced from 5% to 2%.
- iii. The WHT rate for Nigerian residents for construction of road, bridges, building and power plant has been reduced from 2.5% to 2% while for non-residents, the WTH rate has been increased from 2.5% to 5%.
- iv. The WHT rate for Nigerian residents for supply of goods or rendering of services other than those listed in the regulation has been reduced from 5% to 2%.
- v. The WHT rate for companies for consultancy, technical, management and professional fees has been reduced from 10% to 5%.

These reductions will aid retention of working capital for resident companies given the state of the Nigerian economy.

Additionally, if a recipient does not have a Tax Identification Number (TIN), the withholding tax rate for the supply of goods, services, or any eligible transaction involving active income will be doubled from the rate specified in the schedule.<sup>5</sup>

## 2. Persons Required to Deduct Tax at Source

The following entities are required to deduct tax at source:

- i. Bodies corporate or unincorporate (excluding individuals),
- ii. Government ministries, departments, or agencies,
- iii. Statutory bodies,
- iv. Public authorities,
- v. Other institutions, organisations, establishments, or enterprises, including those exempt from tax,
- vi. Payment agents on behalf of any of the above entities.<sup>6</sup>

Note that, **small companies<sup>7</sup> and similar unincorporated bodies are exempt** from this requirement to deduct tax at source if:

- i. The supplier has a **valid Tax Identification Number (TIN)**.
- ii. The transaction value is **N2,000,000.00 or less** during the relevant calendar month.

## 3. Time of Deduction

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<sup>5</sup> Regulation 1(c)

<sup>6</sup> Regulation 2(1)

<sup>7</sup> By the provision of Section 105 of the Companies Income Tax Act (CITA), small companies are companies with gross turnover of N25 million or less.

Deductions at source should be made either when the payment is made or when the amount due is settled, whichever is earlier.

For payments between related parties, the tax must be deducted either when the payment is made or when the debt is recorded, whichever happens first.

For non-resident persons, the deducted amount is treated as the final tax unless further tax is applicable due to a taxable presence in Nigeria.<sup>8</sup>

#### 4. Remittance

The deducted tax amount must be sent to the relevant tax authority as follows:

- i. For payments to the Federal Inland Revenue Service: **by the 21st of the month following the payment.**
- ii. For payments to a State Internal Revenue Service:
  - a. For Capital Gains Tax and Pay-As-You-Earn: **by the 10th of the month following the payment.**
  - b. For any other deductions: **by the 30th of the month following the payment.**

When deducting tax at source, the person responsible must submit a return to the tax authority along with **evidence of remittance**. This submission should include a statement with the following details about the taxpayer:

- i. Name and address
- ii. Tax Identification Number (TIN), National Identification Number (NIN), RC Number, or equivalent
- iii. Nature of the transaction
- iv. Gross amount paid or payable
- v. Amount of tax deducted
- vi. Calendar month of the payment<sup>9</sup>

#### 5. Receipt for Deductions

When deducting tax from a payment, the person responsible must, upon remittance to the tax authority, **issue a receipt** for the deducted tax.

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<sup>8</sup> See Reg 4

<sup>9</sup> See Reg 5

This receipt should include:

- i. Name, address, and Tax Identification Number (TIN) of the person from whom the deduction was made. If the beneficiary lacks a TIN, they should provide their National Identification Number (NIN) for individuals or RC number for companies.
- ii. Nature of the transaction for which the payment was made.
- iii. Gross amount payable or settled.
- iv. Amount deducted.
- v. Month to which the payment relates.

The person who had tax deducted can use the receipt to claim a tax credit from the tax authority.

If a receipt is issued for a deducted amount that has not yet been remitted to the tax authority, the beneficiary will still be credited by the tax authority. However, the unremitted amount will be considered the tax liability of the person who made the deduction, and it will be recoverable with applicable penalties and interest.

## 6. Compliance and Penalties

Failure to deduct or remit taxes on time can result in penalties as set out in the Federal Inland Revenue Service (Establishment) Act<sup>10</sup> or the Personal Income Tax Act.<sup>11</sup>

Non-compliance may also result in administrative penalties and interest on the unremitted amounts.<sup>12</sup>

## 7. Exemptions

Certain transactions are exempt from deduction at source, including:

- i. Compensating payments under a Registered Securities Lending Transaction in line with section 81(8) of the Companies Income Tax Act
- ii. Distribution or dividend payments to Real Estate Investment Trusts or Companies
- iii. Across-the-counter transactions

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<sup>10</sup> Section 40 of the FIRS Act provides that where a someone fails to deduct or remit tax within 30 days of deduction or when due, it's an offense. Upon conviction, they must pay the withheld tax, a penalty of 10% of the tax per year plus interest at the prevailing Central Bank of Nigeria rate and may face up to three years in prison.

<sup>11</sup> Section 74 of PITA imposes a 10% penalty plus interest at the prevailing CBN monetary policy rate for failure to remit tax within 30 days from when it is due.

<sup>12</sup> See Reg 7

- iv. Interest and fees paid to Nigerian banks via direct debit
- v. Goods manufactured or materials produced by the supplier
- vi. Imported goods that do not create a taxable presence in Nigeria
- vii. Payments for income or profit exempt from tax
- viii. Insurance premiums
- ix. Supply of specific fuels (e.g., LPG, CNG, PMS, AGO, LPFO, DPK, JET-A1)
- x. Commissions retained by brokers in line with industry norms
- xi. Winnings from certain games of chance or reality shows promoting entrepreneurship, academics, or innovation<sup>13</sup>

## IMPLICATION FOR BUSINESSES IN NIGERIA

The introduction of these regulations is a strategic move by the Federal Government to enhance its revenue base while supporting economic growth. One of the most significant changes is the **exemption of small businesses from withholding tax compliance**. This move is expected to reduce the administrative burden on SMEs and help them maintain healthier cash flows.<sup>14</sup>

This adjustment is designed to alleviate the financial strain on these enterprises and support their growth and sustainability.<sup>15</sup>

**There are now exemptions for manufacturers, farmers and producers from withholding tax.** This is intended to boost productivity and support local production.<sup>16</sup>

## CONCLUSION

The Deduction of Tax at Source (Withholding) Regulations 2024 emphasize that withholding tax is not a separate tax or an extra cost of the contract or transaction. The regulations further specify that WHT is to be excluded from the contract price and treated as an advance or final tax for the supplier.<sup>17</sup>

This new regulation marks a significant shift in Nigeria's tax policy, aiming to create a more business-friendly environment while ensuring efficient tax collection. The measures put in

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<sup>13</sup> See Reg 8

<sup>14</sup> Ndubuisi Francis. 3<sup>rd</sup> July 2024. This Day. FG Issues Fresh Regulations on Deduction of Withholding Tax at Source. Accessed at (<https://www.thisdaylive.com/index.php/2024/07/03/fg-issues-fresh-regulations-on-deduction-of-withholding-tax-at-source/>)

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> See Reg 3

place by the regulation aim to curb tax evasion and simplify the tax credit process. This is expected to improve overall compliance and efficiency in the tax system.

The regulations address emerging issues in the business environment and align with global best practices.