

GRF DALLEY & PARTNERS

Navigating the Deduction of Tax at Source (Withholding) Regulations, 2024



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Introduction

Withholding tax represents an advance payment on income tax liability deducted from source. This tax obligation constitutes a source of Government revenue while minimising the risk of tax evasion on the part of a taxpayer by shifting the responsibility of tax deduction from the income recipient to the payer.

The Deduction of Tax at Source (Withholding) Regulations, 2024 seeks to establish rules governing the deduction of tax from payments made to taxable persons as identified by the various laws governing taxation in Nigeria, namely, the Capital Gains Tax Act, the Companies Income Tax Act, Petroleum Profits Tax Act, and the Personal Income Tax Act.

This represents a key step towards strengthening fiscal governance by easing tax compliance by relevant parties.

Highlights of the Deduction of Tax at Source (Withholding) Regulations, 2024

Identification of eligible transactions

The Regulations, by virtue of its First Schedule, provide a list of eligible transactions and their corresponding withholding tax rates applicable to both resident and non-resident corporate and non-corporate recipients. With effect from 1st January 2025, non-corporate recipients of winnings from lottery, gaming, reality shows, etc. are to be taxed at a rate of 5% and 15% for resident and non-resident recipients respectively.

Reduced rates from a Treaty between Nigeria and another country for avoiding double taxation are applicable to eligible recipients residing in the treaty country.

However, this is subject to the ratification of the Treaty or protocol by the National Assembly.

Eligible transactions and their corresponding tax rates are listed as follows:

Transactions	Corporate Recipients		Non-Corporate Recipients		Remarks
	<i>Resident</i>	<i>Non-resident</i>	<i>Resident</i>	<i>Non-resident</i>	
Dividend, Interest	10%	10%	10%	10%	Rates as specified in the law
Royalty	10%	10%	5%	5%	Rates as specified in the law
Rent, Hire or Lease	10%	10%	10%	10%	Rates as specified in the law
Commission, consultancy, technical, management, and professional fees	5%	10%	5%	10%	Higher rate for non-residents to serve as final tax
Supply of goods or materials other than by the manufacturer or producer	2%	N/A	2%	N/A	Simplified description and reduced rate to address low margin
Co-location and telecommunication tower services	2%	5%	2%	5%	Lower rate to reflect low industry margins
Supply or rendering of services other than those specifically listed in this Schedule	2%	5%	2%	5%	Simplified description and reduced rates
Construction of	2%	5%	2%	5%	Further rate

road, bridges, building and power plants					reduction to reflect lower margin
Any other form of construction and related activities	5%	10%	5%	10%	Amount due from non-resident is final
Brokerage fee	5%	10%	5%	10%	Subject to Paragraph 10(1)(l) ¹
Directors' fees	N/A	N/A	15%	20%	Rates reflect marginal PIT rate for directors
Compensation for loss of employment	N/A	N/A	10%	10%	Section 36 of the CGT Act
Entertainers and sports persons	N/A	15%	N/A	15%	Applies on amounts earned in Nigeria
Winnings from lottery, gaming, reality shows, etc.	N/A	N/A	5%	15%	With effect from 1 January 2025

Imposition of higher tax rate for operating without a valid Tax Identification Number (TIN)

The Regulations impose a punitive measure on individuals and entities operating without a valid Tax Identification Number (TIN). Recipients without a TIN in transactions involving the supply of goods, rendering of services or any eligible transaction involving non-passive income shall be subject to a higher tax rate.

Persons responsible for deductions at source

The Regulation saddles bodies corporate and unincorporate, Government MDAs, statutory bodies, public authorities, other institutions, organisations, establishments

¹ Commission retained by a broker from money collected on behalf of the principal in line with the industry norm for such transactions is exempted from deductions at source.

or enterprises including those exempt from tax with the responsibility of deducting withholding tax at source in respect of eligible transactions. Furthermore, payment agents representing any of the aforementioned are also required to deduct withholding tax.

Exemption of small companies from deducting withholding tax

Small companies, namely those earning a gross turnover of ₦25,000,000 or less², are exempted from deducting withholding tax. However, in order to benefit from this exemption, the supplier in the eligible transaction must have a valid TIN and the transaction value must not be more than ₦2,000,000.

When obligation to deduct withholding tax arises

The Regulations clearly prescribe when the obligation to deduct withholding tax arises. Withholding tax shall be deducted when payment is made or when the amount due is otherwise settled, whichever occurs first.

Where a payment is due between related parties, the withholding tax obligation arises at the time of payment or when the liability is recognised, whichever occurs earlier.

Final tax obligation for non-resident persons

Under the Regulations, withholding tax deducted from payments made to Non-resident persons who have no taxable presence in Nigeria shall be considered their final tax obligation in the country. However, where the non-resident person has a taxable presence in Nigeria, the income received may be subject to further taxation.³

Remittance of withholding tax to relevant authorities

The Regulations provide for when withholding tax is to be remitted to relevant tax authorities. Withholding tax to be paid to the Federal Inland Revenue Service shall be remitted not later than the 21st day of the month following the month of payment.

² Section 105, Company Income Tax Act

³ Regulation 6(3), Deduction of Tax at Source (Withholding) Regulations, 2024

Taxes payable to the State Internal Revenue Service shall be remitted not later than the 10th day of the month following the payment in respect of Capital Gains Tax and Pay-As-You-Earn; and not later than the 30th day of the month following the month of payment with respect to any other deductions.

Transactions exempted from withholding tax deductions

Regulation 10 lists the following as transactions exempted from withholding tax deductions. However, it must be noted that this exemption does not negate the applicability of income tax obligations as provided for in relevant laws.

1. Compensating payments under a Registered Securities Lending Transaction in line with Section 81(8) of the Companies Income Tax Act;
2. Any distribution or dividend payment to a Real Estate Investment Trust or Real Estate Investment Company as provided under section 80(5) of the Companies Income Tax Act;
3. Across-the-counter transactions, namely any transaction carried out between parties without an established contractual relationship or any prior formal contracting arrangement and in which payment is made instantly in cash or on the spot via electronic means;
4. Interest and fees paid to a Nigerian bank by way of direct debit of the funds which are domiciled with the bank;
5. Goods manufactured or materials produced by the person making the supply;
6. Imported goods where the transaction does not create a taxable presence in Nigeria for the foreign supplier;
7. Any payment in respect of income or profit which is exempt from tax;
8. Telephone charges, internet data and airline tickets;
9. Out-of-pocket expense that is normally expected to be incurred directly by the supplier and is distinguishable from the contract fees;
10. Insurance premium;
11. Supply of Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG), Premium Motor Spirits (PMS), Automotive Gas Oil (AGO), Low Pour Fuel Oil (LPFO), Dual Purpose Kerosene (DPK), and JET-A1;
12. Commission retained by a broker from money collected on behalf of the principal in line with the industry norm for such transactions; and

13. Winnings from a game of chance or a reality show with contents designed exclusively to promote entrepreneurship, academics, technological or scientific innovation.

Implementation date of the Regulations

The effective date for the implementation of the Regulations is 1st January 2025. However, relevant tax authorities have the right to prescribe modalities permitting the early application of provisions of the Regulations from 1st July, 2024, subject to the approval of the Minister of Finance.

Conclusion

The importance of small businesses in economic development cannot be underestimated. In view of this, it is anticipated that the exemption of small companies from withholding tax would have the effect of easing the tax burden while enforcing TIN compliance in transactions.

The Deduction of Tax at Source (Withholding) Regulations, 2024 plays a significant role in enhancing compliance with Nigeria's withholding tax regime by providing clear guidance on tax obligations thereby mitigating the risk of tax evasion and promoting Government revenue generation.

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