



THE DEDUCTION OF TAX AT SOURCE (WITHHOLDING) REGULATIONS 2024: HIGHLIGHTS AND IMPLICATIONS

Tax Insights

Volume 1 Issue 1 | July, 2024



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THE DEDUCTION OF TAX AT SOURCE (WITHHOLDING) REGULATIONS 2024: HIGHLIGHTS AND IMPLICATIONS

1.0 INTRODUCTION

On July 1, 2024, the Federal Ministry of Finance issued the Deduction of Tax at Source (Withholding) Regulations 2024 (the “WHT Regulation” or “Regulation”). The Regulation which was issued pursuant to the powers of the Minister under, Section 81 (9) of the Companies Income Tax Act and Section 73 (6) of the Personal Income Tax Act to make regulations to govern the deduction of tax at source provides a clear framework for the deduction of withholding tax (WHT).

The Regulation was issued as part of the ongoing reforms by the Presidential Committee on Fiscal Policy and Tax Reform to improve the administration of WHT in Nigeria by providing a definite scope for its collection and remittance in Nigeria. The Regulation is to take effect on July 1, 2024

This article provides an overview of the Regulation, starting with a brief description of the concept of withholding tax. It identifies the highlights of the Regulation and briefly discusses its legal and economic implications for taxpayers, the tax system, and the Nigerian economy.

2.0 WITHHOLDING TAX REGIME IN NIGERIA

By its very nature, WHT is an advanced payment of income tax on specific transactions.¹ Accordingly, though it may be prone to misconception, WHT is not a type of tax; rather, it is a form of income tax collection by way of deductions at source of earnings from certain transactions.

In Nigeria, the concept of WHT was introduced into the Nigerian tax system in 1977 as part of the measures to eliminate tax evasion and curb tax leakages within the tax system,² and have since become part of the tax framework. For instance, the Companies Income Tax Act (CITA) provides for the deduction of WHT from any payments made by any person, whether an assessment has been made,³ as an indication of its presence in the tax system.

Since its introduction, there have been several challenges in the administration of WHT in Nigeria. This includes the lack of clarity regarding the persons required to remit WHT, the eligible transactions and rates, the treatment of WHT

¹ Federal Inland Revenue Services: Withholding Tax – Frequently Asked Questions <https://www.firs.gov.ng/faq/WithholdingTax> accessed on July 11, 2024.

² N K Eze and J F Ikechi, 'Effect of Withholding Tax on Income of Public Servants and Revenue Generating Capacity of Nigerian Government' 9(12) Journal of Accounting and Management (2023) 78.

³ Section 81 of Companies Income Tax Act.



as a separate tax and difficulties in obtaining tax refunds in remittance of excess WHT. These challenges have contributed to the list of multiple taxes businesses are required to pay.

Borne out of the drive to simplify tax administration, ease the compliance burden and foster a thriving environment for businesses, especially Small and Medium Enterprises (SMEs),⁴ the Regulation issued by the Federal Ministry of Finance will help address the above issues prevalent in the previous regime.

3.0 HIGHLIGHTS OF THE DEDUCTION AT SOURCE (WITHHOLDING) REGULATIONS 2024

As noted above, the WHT Regulation was issued as part of Nigeria's ongoing tax reform to promote a coherent, equitable and efficient tax system that supports productive activities and delivers sustainable fiscal outcomes while being inclusive and competitive to achieve shared prosperity for Nigerians.⁵ The highlights of the Regulation are outlined below:

3.1 Establishment of a clear and unified Withholding Tax Regulation

Before the WHT Regulation, reference to WHT (and its application) could only be found in various tax laws and were not codified in a single document or instrument.⁶ The WHT Regulation establishes a single, unified framework for WHT in Nigeria, thus providing clarity and ensuring ease of reference.

3.2. Clarity of Nature of Withholding Tax

Before the WHT Regulation, there was constant confusion about the nature of WHT as a type of tax. The law was not explicit on the nature of WHT as an advance payment of income tax and not as a tax itself. However, it is clear in the Regulation that WHT should not be treated as a separate tax or an extra cost.⁷

3.3. Persons eligible to deduct at Source

The WHT Regulation now clearly defines persons required to make deductions at source. This is particularly notable as it clarifies the persons required to deduct WHT. The categories of people required to make deductions are listed as follows:

⁴ Taiwo Oyedele @taiwoyedele, "A Simplified and Business Friendly Withholding Tax Regime has been approved..." Twitter, <https://x.com/taiwoyedele/status/1808036159617946026>, accessed July 12, 2024.

⁵ Presidential Committee on Tax Policy and Fiscal Reform, Nigeria: Draft National Fiscal Policy (June 2024), chapter 2, paras 2.0.

⁶ For instance, reference to withholding tax could be found in section 73 of PITA; section 81 of CITA; and section 56 PPTA.

⁷ Paragraph 3 of the Deduction of Tax at Source (Withholding) Regulations 2024.



- a. A body, corporate or unincorporate, other than an individual
- b. A Government, Government Ministry, Department or Agency
- c. A statutory body
- d. A public authority
- e. Any other institution, organization, establishment, or enterprise exempt from tax.
- f. A payment agent on behalf of any person in (a-e) above.⁸

From the above, it is apparent that individuals are not eligible to deduct WHT, which may have been uncertain or difficult to determine under the previous regime.

3.4. Definite Timelines for Deduction and Remittance

The WHT Regulation outlines when the obligation to deduct at source arises and prescribes a timeline for the remittance of the amount deducted at source. In this regard, it provides that the WHT be remitted to the Federal Inland Revenue Service (FIRS) no later than the 21st day of the month following the month of repayment. On the other hand, payment to the State Internal Revenue Service (SIRS) is due on the 30th day, except in the case of Capital Gains Tax (CGT) and Pay-As-You-Earn (PAYE), which are to be remitted to the SIRS no later than the 10th of the month following the month of payment.⁹

3.5. Exempt Transactions

The WHT Regulation presently exempts certain transactions from deduction at source. This is also a notable improvement from the erstwhile regime, which was plagued with ambiguity and led to a multiplicity of deductions.¹⁰ Some of these transactions include the following:

- Across-the-counter transactions as defined in the WHT Regulations¹¹;
- Out-of-pocket expenses normally incurred by the supplier distinguishable from the contract fees;
- Insurance premiums;
- Goods manufactured or materials produced by the person making the supply;
- Imported goods where the transaction does not create a taxable presence in Nigeria for the foreign supplier;
- 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;

⁸ Paragraph 2 of the Deduction of Tax at Source (Withholding) Regulations 2024.

⁹ Paragraphs 4 and 5 of the Deduction of Tax at Source (Withholding) Regulations 2024.

¹⁰ Paragraph 8 Deduction of Tax at Source (Withholding) Regulations 2024.

¹¹ Defined as 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.



- Commission retained by a broker from monies collected on behalf of the principal in line with the industry norm for such transactions;
- Winnings from a game of chance or a reality show with contents designed exclusively to promote entrepreneurship, academics, and technological or scientific innovation.

3.6 Review of Eligible Transactions and Applicable Rates

The WHT Regulation outlines the eligible transactions and their applicable rates. While the Regulation retains the existing rates for some transactions, it reduces the applicable rates for other transactions. The eligible transactions and rates are as follows:

Transactions	Corporate recipients		Non-corporate recipient	
	Residents	Non-residents	Residents	Non-residents
Dividend, Interest	10%	10%	10%	10%
Royalty	10%	10%	5%	5%
Rent, Hire or Lease	5%	10%	5%	10%
Commission, consultancy, technical, management, and professional fees	5%	10%	5%	10%
Supply of goods other than by manufacturer	2%	N/A	2%	N/A
Colocation and telecommunication tower services	2%	5%	2%	5%
Supply or rendering of services other than those specifically stated	2%	5%	2%	5%
Construction of roads, bridges, buildings and power plants	2%	5%	2%	5%
Any other form of construction and related activities	5%	10%	5%	10%
Brokerage fee	5%	10%	5%	10%
Directors' fees	N/A	N/A	15%	20%
Compensation for loss of employment	N/A	N/A	10%	10%
Entertainment and sportspersons	N/A	15%	N/A	15%
Winnings from lottery, gaming, reality shows (other than those listed as exempt)	N/A	N/A	5%	15%



3.7. Exemption of Specific Businesses

The WHT Regulation exempts small and medium enterprises and unincorporated entities from deduction of WHT, provided that the supplier has a valid Tax Identification Number (TIN), and the value of the transaction is NGN2,000,000 (Two Million Naira) or less during the relevant calendar year. These changes simplify compliance and reduce administrative burden, significantly benefiting SMEs operating in Nigeria.

In the same vein, Paragraph 8 of the Regulations provides that transactions where goods are manufactured, or materials are produced by the person making the supply, farmers and other producers are exempted from WHT. This further helps in reducing the administrative burden of WHT on small businesses.

3.8. Improved Refund Mechanism

The WHT Regulation seeks to curb the difficulty with obtaining tax refund by allowing the person making the deduction for the payment to issue a receipt of tax deducted to the person receiving the payment, and such receipt can be presented to the tax authority as evidence of WHT deducted to obtain a tax credit for the amount deducted. The enhancements in the refund mechanism for overpaid or erroneously deducted WHT ensure that taxpayers can recover excess payments more efficiently, improving taxpayer experience and trust in the tax system.¹²

3.9 Interpretation Section

Including an Interpretation section has helped to provide more clarity on the WHT regime. This development simplifies compliance and provides a more transparent and comprehensible framework for taxpayers.¹³

4.0 LEGAL AND ECONOMIC IMPLICATIONS OF THE WHT REGULATIONS

It is believed that the Regulation has legal and economic implications. This section will highlight some of the potential implications.

4.1 Clarity in the WHT regime

The new Regulation provides clarity in the WHT regime. The Regulation

¹² Paragraph 6 (3) of the Deduction of Tax at Source (Withholding) Regulations 2024.

¹³ Paragraphs 4 and 5 Deduction of Tax at Source (Withholding) Regulations 2024.



clearly defines eligible transactions, their applicable rates, and exempt transactions. Hence, there is no doubt about the categories of persons required to withhold tax at source, the transactions for which the deductions are to be made, and the applicable rates.

4.2 Reduction of multiple taxation

A pivotal feature of this Regulation is its restatement of WHT as an advanced payment of income tax and not a form of tax in itself. It is pertinent to note that one of the challenges businesses face is the deduction of WHT as a form of tax. By reiterating WHT as a mode of collection as opposed to a form of tax, this Regulation would curb the incidence of multiple taxation.

4.3 Impact on Small Businesses in Nigeria

Small and medium enterprises play a crucial role in developing any economy, including contributing to the national GDP and providing employment.¹⁴ SMEs and unincorporated entities being exempted from deducting WHT will help reduce the tax compliance burden on SMEs. This has the potential to improve SMEs' access to working capital, which can be used to invest in their businesses and meet their financial obligations.

4.4 Alignment with Federal Government Tax and Fiscal Policy Reforms

The Presidential Committee on Fiscal Policy and Tax Reforms was constituted to address fiscal governance, revenue transformation and economic growth facilitation issues. One of the guiding principles of the Committee is to refrain from introducing new taxes or raising existing tax rates except if it becomes necessary to compensate for harmonised taxes and levies or prevent revenue loss.¹⁵

This Regulation is in line with the proposed tax policy reforms by the Federal Government. It sends the right signal to the public about the tax policy direction of the Federal Government, and the will to implement the proposals and recommendations of the Presidential Committee on Fiscal Policy and Tax Reforms.

4.5 Consideration in Contractual Agreements

WHT is often misconstrued as a different type of tax. As a result, parties tend to make it an additional consideration or term in contracts. However,

¹⁴ Z O Opafunso and O O Adepoju, 'The Impact of Small and Medium Scale Enterprises on Economic Development of Ekiti State, Nigeria' 5(16) Journal of Economics and Sustainable Development (2014) 115; Moniepoint MFB, 'Small Business Statistics in Nigeria for 2024' <https://moniepoint.com/blog/nigeria-small-business-statistics>. Accessed on July 12, 2024.

¹⁵ <https://fiscalreforms.ng/index.php/2024/04/03/the-federal-government-plans-to-reduce-the-number-of-payable-taxes-to-9/>



Paragraph 3 of the Regulation clarifies this position by noting that WHT deduction is not a separate or additional tax but a mechanism for collecting tax at source. The implication, therefore, is that WHT should not be included in the contract price/consideration as an additional cost or charge. This clarification, as provided by the WHT Regulation, provides clarity and will promote tax compliance.

However, it is noted that this could lead to disputes or misunderstandings between contracting parties where a contract expects to receive the full negotiated sum specified in the contract, with all taxes already deducted at the source. Contracting parties must therefore ensure that contract terms are clear and precise on the handling of taxes, including WHT.

4.6 Economic Considerations

By reducing the percentage of certain deductions, the WHT Regulation represents a balance between generating revenue for the government and reflecting the economic realities in Nigeria.¹⁶ Notably, the applicable rates to certain transactions, particularly those involving primary goods and consumables, have been reduced. For instance, the deduction from profits on the supply of materials and goods not produced by the producers and manufacturers has been reduced from 5% to 2%.

Similarly, the deduction on the supply of basic services not specified in the schedule has been reduced to 2% for residents and 5% for non-residents applicable to both corporate and non-corporate recipients. Consultancy, commission, technical, and professional fees attract a 5% deduction from the previous 10% for corporate and non-corporate resident recipients and 10% for non-resident recipients.

The direct economic implication of these reductions, as highlighted above, is that the deduction at source against general assessment would not cripple capital and cashflows of small businesses that form the fulcrum of the Nigerian economy. This means that the WHT Regulation could benefit small businesses and, by extension, the Nigerian economy.

There has been an increment and a new set of deductions to balance these reductions. For instance, winnings from games of chance (aside from the types exempted), including lottery, reality shows, and gaming will now be subject to rates between 5% and 15% starting from October 1, 2024,

¹⁶ <https://www.premiumtimesng.com/news/top-news/629394-nigerian-government-takes-aim-at-rich-persons-to-grow-tax-revenues.html?tztc=1>



while a rate of 15% and 20% for resident directors and non-resident directors respectively will apply to directors' fees. These adjustments reflect a progressive system of taxation where higher taxes are levied on the perceived wealthy than on the less affluent.

4.7 Ease of Obtaining and Utilisation of Tax Credit

Prior to the Regulation, the taxpayers (not the persons with the duty to deduct) often faced the dilemma of obtaining tax credits for taxes deducted at source, where the persons expected to deduct had not remitted the deducted sum to the respective tax authorities. From experience, the FIRS often maintained that since the deducted sum had not been remitted, the taxpayer could not claim the tax credit.

However, the Regulation has put the dispute to rest by affording taxpayers the right to tax credits as the receipt would be sufficient proof of deduction of the tax. The taxpayer only needs to present the tax deduction receipt to the tax authority, which will be considered in their favour. This ensures tax certainty and improves tax compliance.

4.8 Legality of the Offences under the Regulations

The WHT Regulation prescribes the applicable punishments for non-compliance. More specifically, Paragraph 7(1) of the Regulation provides that a person who fails to deduct at source or to remit the sum deducted to the relevant tax authority within the set timeline would be liable to penalties as prescribed under section 40 of the Federal Inland Revenue Service (Establishment) Act (FIRSEA), or Section 74 of the Personal Income Tax Act (PITA) as applicable while, Paragraphs 7(2) and (3) of the Regulation introduce administrative penalties for failure to deduct and for failure to remit deducted sums, respectively. Arguments could arise on whether the Minister has the power to provide for additional punishments despite the substantive Acts making sufficient provisions for these offences.¹⁷

Although it is understood that the penalty provisions in the WHT Regulation represent an attempt at driving compliance as regards WHT, it is important to highlight that this may be challenged on the basis that, by introducing additional penalties beyond what the enabling Acts (CITA, PITA) provide for,¹⁸ the Regulation seeks to amend the provisions of these Acts. The position of the law is that subsidiary legislation cannot amend an enabling statute since it draws life from such statute.¹⁹

¹⁷ See Section 74 of PITA, and 82 of CITA

¹⁸ Section 74 of PITA imposes 10% (Phoenix Motors Ltd v N.P.F.M.B. (1993) 1 NWLR (Pt. 272) 718 at 728-729 H-A, per cent) penalty or N5,000, whichever is higher, upon conviction.

¹⁹ See



Considering that the powers of the Minister to make Regulations as regards WHT is derived from sections 73(6) and 81(9) of PITA and CITA, respectively, it could be argued that by introducing additional penalties in the WHT Regulation – thereby seeking to amend the provisions of the enabling statutes – the Minister may have acted beyond his scope of authority. This could be considered as acting ultra vires his authority, and the offending provisions of the WHT Regulation – that is, Paragraphs 7(2) and (3) – may be liable to be declared null and void.

5.0 CONCLUSION

The article has analysed the provisions of the Deduction of Tax at Source (Withholding) Regulations 2024 and highlighted the legal and economic implications of the Regulation. Overall, the Regulation is a step in the right direction in revamping the Nigerian tax system, specifically the ambiguities with which the administration of WHT in Nigeria has been fraught. The provisions of the Regulation, for instance, regarding the exemption of deduction where the transaction involves SMEs, will benefit SMEs and, by extension, will foster entrepreneurship in Nigeria, thereby improving various aspects of the Nigerian economy. The Regulation comes into effect on July 1, 2024, and affected entities will be required to reconfigure their systems to ensure their tax compliance.



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