



Highlights of the Deduction at Source (Withholding) Regulations 2024



Background

The Federal Ministry of Finance has recently issued the Deduction at Source (Withholding) Regulations 2024 (the “Regulations” or “WHT Regulations”), effective 1 July 2024, except for the rules applicable to the gaming sector which are billed to commence on 1 October 2024. These Regulations have introduced a number of changes to the Withholding Tax (WHT) regime in Nigeria.

Caveat: The Regulations have been signed by the Minister of Finance thus come into force in line with the Interpretation Act. The gazette is expected shortly in line with the Authentication Act as it announces it formally and validates its authenticity. It is less likely that the signed regulation in circulation will change but it is recommended that taxpayers rely on the gazetted version.

Overview

Withholding Tax (WHT) is an advance payment of income tax and is deductible at source on payments made for certain transactions. It can be applied as a credit against income tax in most instances, except where the laws provide that the WHT is final tax. Some of the key benefits of WHT is that it facilitates cash flow for the government (by collecting tax in advance on transaction basis rather than waiting for annual tax filings), reduces tax leakages and gathers information on commercial activities being carried out by taxpayers.

In the pre-existing WHT Regulations, there were a number of concerns around different issues such as when to deduct WHT, what type of transactions were exempt from WHT, excessive WHT rates for certain transactions, and other administrative issues.

The new WHT Regulations seeks to address some of these issues, and we have highlighted the major changes below:



Changes introduced by the Regulations

Commencement date: Businesses have to apply the new rules from 1 July 2024 subject to changes from a gazetted version. However, the rules pertaining to the gaming sector become effective on 1 October 2024.

Clarity and reduced rates for certain transactions: The WHT Regulations either exempt or reduce the WHT rates for certain transactions. They also clarify the WHT regime on the sale of goods.

The previous WHT Regulations exempted “sales in the ordinary course of business” from WHT. However, this exemption was considered ambiguous, even after some clarity was introduced by the Tax Appeal Tribunal¹. The new WHT Regulations specify that the sale of goods by Nigerian businesses are generally subject to WHT at 2%, with the exception of goods manufactured or materials supplied directly by the manufacturer or producer, over-the-counter sales and other relevant specific exemptions in the “Transactions exempt” section below.



WHT on transactions with no identification number: WHT will apply at twice the designated rate on trading income earned by vendors that do not provide a Taxpayers Identification Number (TIN).

Who should deduct WHT: The new WHT Regulations removes the operation of the Pay-As-You-Earn (PAYE) scheme as a requirement to be eligible to deduct WHT. The Regulations clarify that other than individuals, virtually all businesses, organisations (including those exempt from tax), government ministries, departments and agencies, and their payment agents are required to deduct WHT on eligible transactions.

However, small companies are exempt from deducting WHT, provided that the transaction value is less than NGN2,000,000 and the vendor has a valid TIN.

When to deduct: The Regulations clarifies that for transactions between unrelated parties, WHT is to be deducted at the earlier of when:

- payment is made; or
- the amount due is otherwise settled

However, WHT on transactions between related parties apply at the earlier of payment or when the liability is recognised.

This largely addresses the ambiguity around the timing of WHT deductions. However, for passive incomes (dividends, interest, royalty and rent), the substantive laws still generally provide that the WHT should be due at the earlier of when the payment is “made or credited”, and this would supersede the Regulations.

When to pay WHT: The timelines for payment of WHT remain the same as under the previous WHT Regulations (i.e 21st of the following month for payments to the FIRS, and 30th of the following month for payments to the relevant SIRS). Additionally, the Regulations clarify that Capital Gains Tax (CGT) deducted on payments to individuals should be paid to the relevant SIRS by the 10th of the following month, similar to income tax paid through the PAYE Scheme.

WHT receipts and credits now issued by customer: The Regulations provide that the customer (and not the tax authority) should issue a receipt of tax deducted to the vendor. The vendor can present this receipt to the relevant tax authority as evidence of WHT deducted and will get value, regardless of whether the WHT was remitted by the customer or not.

Where customers issue receipts for deducted but unremitted WHT, the customer will be liable to the WHT as their tax liability, together with interest and penalty in line with the law.

Customers that pay vendors in full: Customers that did not deduct WHT but paid their vendors in full will be subject to administrative penalty and a one-off interest, as opposed to the current practice of requiring such customers to also pay the WHT.

Transactions exempt: The Regulations include the following as WHT exempt (among others):

- Goods manufactured or materials produced by the person making the supply. The Regulations define manufacturing/production to include the production of energy, including electricity, gas and petroleum products
- Across the counter transactions, i.e transactions carried out between parties without established or prior contractual relationship and in which payment is made on the spot
- Interest and fees paid to a Nigerian bank by way of direct debits to accounts in the banks
- Out-of-pocket expenses normally expected to be incurred by the supplier distinguishable from contract fees
- Insurance premium
- Supply of Liquefied Petroleum Gas, Compressed Natural Gas (CNG), Premium Motor Spirits (PMS), Automotive Gas Oil (AGO), Low Pour Fuel Oil (LPFO), Dual Purpose Kerosene (DPK) and JET-A1
- Commission retained by broker from monies collected on behalf of principal in line with the industry norm
- Winnings from a game of chance or a reality show with contents designed to promote entrepreneurship, academics, technological or scientific innovation





| Transactions | Corporate recipients | | Non corporate recipients | | Remarks |
|--|----------------------|---------------|--------------------------|---------------|---|
| | Residents | Non residents | Residents | Non residents | |
| Dividends and Interest | 10% | 10% | 10% | 10% | Rates as specified in the law |
| Royalties | 10% | 10% | 5% | 5% | Rates as specified in the law |
| Rent Hire, Lease | 5% | 10% | 5% | 10% | Rates as specified in the law |
| Commission, consultancy, technical, management, and professional fees | 5% | 10% | 5% | 10% | Higher rates for non residents to serve as final tax |
| Supply of goods other than by manufacturer | 2% | NA | 2% | NA | Simplified description and reduced rate to address low margin |
| Colocation and telecommunication tower services | 2% | 5% | 2% | 5% | Lower rate to reflect low industry margin |
| Supply or rendering of services other than those specifically stated | 2% | 5% | 2% | 5% | Simplified description and reduced rate |
| Construction of road, bridges, building and power plants | 2% | 5% | 2% | 5% | Further rate 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 7(2) |
| 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 |
| Entertainment and sportspersons | N/A | 15% | NA | 15% | Applies on amounts earned in Nigeria |
| Winnings from lottery, gaming, reality shows (other than those listed as exempt) | N/A | N/A | 5% | 15% | With effect from 1 October 2024 |

Takeaway and Impact analysis on key industries

The WHT Regulations have introduced key changes which reduce uncertainties and administrative burden on taxpayers, and are generally beneficial to taxpayers. It also raises certain issues some of which we highlight below:

General/administrative considerations

- Transition period:** The National Tax Policy (NTP) recommends a 90-day window for the implementation of tax law amendments. The regulations take effect immediately with no transition period contrary to the provisions of the NTP.
- Configuration of systems:** Accounting systems need to be upgraded to reflect more tax rates. There are now at least 6 WHT rates: 0%, 2%, 5%, 10%, 15% and 20% and potentially more considering that the rates are doubled where vendors do not provide TINs. Compliance processes should be tightened possibly with a need to invest in more modules to avoid significant exposures arising from several tax rates.



- c) **Instant credits:** The new Regulations require the customer to issue WHT receipts as against the historical practice where this was done by the tax authorities. Taxpayers will be pleased that they can obtain value as soon as the customer issues WHT receipts, as this avoids unnecessary delays and loss of value.

However, there are concerns on how this will be applied on the Taxpro Max portal which is used by the FIRS, or other online system used by other state tax authorities. Currently, WHT deducted and paid by customers automatically reflect in favour of the vendors on Taxpro Max. With the introduction of the new Regulations, vendors will have to submit WHT receipts issued by customers for manual update on Taxpro Max by the FIRS. This introduces a manual administrative step which may also require reconfiguration of the system, and may mean that the FIRS would need to set up procedures to verify the uploads. We recommend that receipts issued by customers should bear payment reference numbers to ease reconciliation.

- d) **Sales in the ordinary course of business:** The Regulations clarify the previous ambiguity around “sales in the ordinary course of business” as it more clearly defines WHT exempt supplies. Certain services that were considered as “sales in the ordinary course of business” and previously exempt will now no longer enjoy the WHT exemption. For other sales of goods that are not exempt, vendors should be aware that their supplies now attract 2% WHT. These companies would now need to make a taxable margin of at least 6.7% in order to fully absorb the WHT, otherwise, they would be in a tax refund position.
- e) **Addressing WHT refunds:** There was a reduction of the WHT rate for a number of transactions including colocation and other services with low profit margins. Affected taxpayers may have over time accumulated excess WHT credits with no cash refund in view. The amendments therefore lend support to better cash flow management, freed up funds for capital investments and the ease of doing business amidst recent exits of multinationals from Nigeria.

It is hoped that the FIRS and Joint Tax Board would also issue clear modalities in future around obtaining accumulated WHT refunds with more focused rather than unduly lengthy audits.

- f) **Commission and brokerage fees:** The Regulations clarify that WHT should not apply on commission retained by a broker on monies collected on behalf of the principal in line with the industry norm. This puts the agelong issue to rest and overrides previous judicial precedents that gave contrary rulings. It is expected to be a welcome development to players in sectors where agents or brokers deduct their fees at source.
- g) **Transaction currency:** Following the announcement of the 30 day quick wins of the Presidential Committee on fiscal policy and tax reforms last year, we anticipate an amendment that allows WHT to be paid in Naira regardless of the transaction currency. This is expected to reduce the pressure on the Naira especially in view of the declining foreign exchange rate.

Gaming sector



- a) The imposition of WHT on winnings (except for the specific exemptions listed) raises further concerns in the gaming industry:
- i. It may be technologically and financially burdensome to implement a solution that is able to account for WHT on certain gaming operations (especially casino activities). Operators in the industry generally prefer for taxes to be imposed on their operations as opposed to players' winnings. There is a risk that gaming and lottery companies could revisit their business models in order to be competitive against illegal or foreign operators (who do not comply with the Regulations).



- ii. Countries such as Angola, Liberia, Malawi and Rwanda include a threshold to avoid taxing participants within income brackets exempt from income tax. The Regulations currently set no threshold for those in lower income brackets.
- iii. There are some ambiguities on how to apply the WHT exemption to “winnings from a game of chance or a reality show with contents designed to promote entrepreneurship, academics, technological or scientific innovation” as highlighted in the WHT Regulations. The intention may be that the latter qualifying terms apply to both “game of chance” and “reality shows”. Any other interpretation would mean that all games of chance are exempt from WHT, which cannot be the intention of the Regulations as these activities are included in the WHT table. Other practical concerns are whether promotions like raffles would be considered an entrepreneurial game of chance or whether tax should be accounted for on non-monetary winnings.
- iv. It is common for players to lose a number of bets before winning. In such instances, it is not very clear to what extent the losses can be used to reduce the wins on which WHT applies. The Regulations sought to address this issue by defining “winnings” as “the net payout...in a game of chance...”. However, this is expected to be difficult to implement in practice considering the different models and modalities for accounting for winnings by the different types of gaming businesses.

Oil and gas/Energy

The Regulations stipulate that businesses in this sector are now exempt from WHT where such businesses supply energy (including electricity, gas and petroleum products). The Regulations also clarify that WHT does not apply on the sale of LPG, CNG, PMS, AGO, LPFO, DPK and JET-A1. This is expected to be well received by participants in this sector.

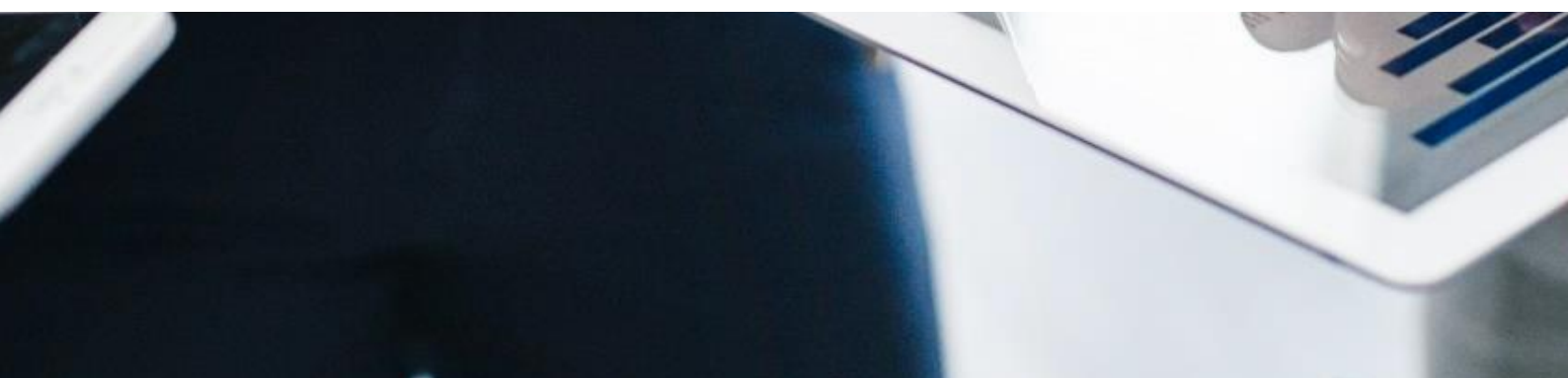
Non-residents

- a) The Regulations do not clearly exclude non-residents from deducting WHT. Based on jurisdictional expedience, Nigerian laws should ordinarily not extend to NRCs, especially if they do not have a fixed base or dependent agency arrangement in Nigeria.
- b) Many non-residents, especially those that remotely transact with Nigerian customers or earn passive income from Nigeria, do not register for taxes in Nigeria in practice. This may result in the application of double the WHT rate on the relevant transactions in line with the new Regulations. Such costs may eventually be borne by the customers in practice. The tax authorities may consider ruling that where the beneficiary TIN is not available, the customer can include alternative means of identification of the non-resident supplier (such as Business Registration Number, etc). The rationale is to align with global best practice and reduce administrative burden for non-residents seeking to do business with Nigeria, and ultimately ensure WHT deducted is remitted to the tax authorities.

Public sector

Ministries, Departments, and Agencies (MDAs), have historically been required to deduct WHT based on the rates specified in the Government Financial Management Information Systems (GFMIS). The GFMIS now needs to be updated to reflect the new rates. The GFMIS notably still charges Stamp duties on transactions with the government, despite the legal exemption of Stamp duties on transactions with the federal government.

In general, the new WHT Regulations are expected to make the tax landscape in Nigeria more business friendly.



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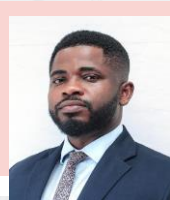
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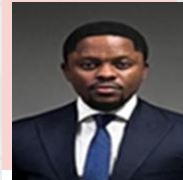
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