

## The FIRS issues Circular to guide implementation of the Withholding Tax (WHT) Regulations 2024

### Background

On 24 February 2025, the Federal Inland Revenue Service (FIRS) issued a Circular outlining guidelines for the implementation of the Deduction of Tax at Source (Withholding Tax) Regulations, 2024, which became effective on 1 January 2025.

Please see our previous publication on the version signed by the Minister of Finance released to the public in July 2024 [here](#) and our tax alert on the changes from the gazetted version released in October 2024 [here](#). Our insights on the Circular are discussed below

### Insights from the Circular

The Circular outlines several key areas of focus:

- Scope:** The guidelines apply to all companies, partnerships, statutory bodies, non-statutory bodies, unincorporated persons, and non-resident persons involved in transactions requiring tax deduction at source.

- When to deduct:** For transactions between unrelated parties, tax must be deducted at the earlier of when payment is made or when the transaction amount is otherwise settled. The Circular outlines the criteria for considering a payment as 'otherwise settled,' by highlighting the means of settlement, the timing of deduction, the parties responsible for deducting tax and the beneficiaries of the deducted tax.

Transactions can be settled in various ways, including via a barter or exchange, stock transfers, third-party payments, and debt swaps.

For related parties, tax must be deducted at the earlier of the payment date or the date the liability is recognized.

- Small Companies:** Small companies are exempt from deducting tax at source where two conditions are met:

1. the transaction value is ₦2,000,000 or less and;
2. the supplier has a valid Taxpayer Identification Number (TIN).

The Circular provides several illustrations to guide small companies to determine when and when not to deduct at source. However, in Illustration 4 of the Circular, the FIRS seems to have omitted the application of Paragraph 3(c) of the WHT regulations which provides that WHT will apply at twice the designated rate on trading income earned by vendors that do not provide a valid Taxpayer Identification Number (TIN).

- Fake receipts:** The Circular provides that the submission of counterfeit or fake receipts for claiming tax credit will attract appropriate sanctions as provided in the law. We expect that these sanctions will be invoked in line with Section 43 of the FIRS Establishment Act (FIRSEA) which provide that any person who -

1. counterfeits or falsifies any document which is required by or for the transaction of any business; or
2. knowingly accepts, receives or uses any document so counterfeited or falsified; or
3. Alters any document after it is officially issued,

commits an offence and will be subject to a fine of up to N200,000, imprisonment for up to 3 years, or both such fine and imprisonment.

- Exemptions:** The Circular emphasises that while WHT does not apply on interest or fees paid to a Bank by a customer through direct debit of the customer's funds domiciled with the Bank, where a corporate customer pays interest or fees to a bank other than by way of the direct debit to its account with the bank, the customer should deduct tax.

The FIRS acknowledges the exemption of commission retained by brokers from WHT. However, it underscored that the exemption only applies to persons licensed to act as brokers by the industry regulators.

- Penalties:** The Circular reiterates the penalties under the Regulations for failure to deduct or remit WHT tax due to the Service.

- Power of the Accountant-General of the Federation (AGF):** In line with Section 24 of the FIRSEA and Section 83 of CITA, the AGF has been given the powers to deduct unremitted taxes due from the budgetary allocations of any Ministry, Department, or Agency and remit same to the relevant tax authority.

### Takeaway

The Circular includes non-resident companies (NRCs) as entities also required to deduct WHT. However, it is not clear whether this requirement extends to NRCs that do not have a fixed base or dependent agency arrangement in Nigeria. We expect that Nigerian laws should ordinarily not apply to such NRCs based on jurisdictional expedience.

When considering different means of settlement, there is also the issue of the feasibility of deducting tax at source in the case of a barter or exchange. Considering that tax is borne by the supplier, the double coincidence of wants in barter or exchange transactions creates ambiguity about who should deduct the tax because both parties are simultaneously giving and receiving value. Will both parties then be required to deduct WHT based on the fair market value of the goods or services they receive? It would have been preferable if clearer guidelines were included in the Circular in this regard.

Based on the FIRS Circular, WHT exemption will not apply on fees or commissions retained upfront by unlicensed agents, even though the licensing requirement is not specifically stated in the Regulations. This requirement may be too categorical and can be considered as a restriction not imposed by the Regulations.

Despite the powers given to the tax authorities in Paragraph 11 of the Regulations to issue guidelines for the effective implementation, the guidelines must still align with the overarching legal framework and cannot amend or supersede its legal basis.

Additionally, the circular does not articulate when a receipt issued to a beneficiary will be deemed fake or counterfeit. For instance, will the WHT receipt be deemed fake only when it has been falsified by the beneficiary? Also, will there be any measures put in place to prevent falsification of WHT receipts for transactions between related parties? We expect that a beneficiary should not be penalised for relying on erroneous WHT receipts duly issued by the customer.

The Circular did not provide clarity on several administrative issues such as how beneficiaries of tax deducted are to claim WHT credit using customer-issued WHT receipts. Other grey areas include the application of double rates where suppliers do not have a valid TIN and how to remit such WHT, the application of different rates on Directors' fees as against 10% as specified in the Personal Income Tax Act (PITA), the practicality of deductions to be made by NRCs and the process for obtaining accumulated WHT refunds.

We anticipate that the FIRS will issue additional circulars addressing the issues raised and other modalities not covered in this Circular. Some of these issues may also be addressed by clarifications issued by the Joint Tax Board (JTB).



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