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**AN ANALYSIS OF THE DEDUCTION OF TAX AT SOURCE (WITHHOLDING) TAX
REGULATIONS 2024. – MS. FUNMILOLA OLABIRAN (LLB.)**

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INTRODUCTION

In exercise of the powers contained in Section 81(9) of the Companies Income Tax Act, Section 56 of the Petroleum Profits Tax Act, and section 73(6) of the Personal Income Tax Act, the Minister of Finance and Coordinating Minister of the Economy issued a new Deduction of Tax at Source (Withholding) Regulations 2024 which took effect from 1 July 2024.

Withholding Tax (WHT) is an advance payment of income tax and is deductible at source on payments made for certain transactions.

The new WHT Regulations seeks to address some of these concerns/issues in the pre-existing regulations. This article seeks to analyze the key provisions of the regulation.

KEY PROVISIONS OF THE REGULATION.

a. Persons required to deduct WHT at source¹: The new Regulation provides that other than individuals, virtually all businesses, organisations (including those exempted from tax), government ministries, departments and agencies, and their payment agents are required to deduct WHT on eligible transactions.

However, small companies and unincorporated entities are NOW exempted from deducting WHT, provided that the transaction value is less than NGN2,000,000 and the vendor has a valid Tax Identification Number (TIN). Previously, small companies were obligated to deduct tax at source notwithstanding the value of the transaction.

b. When deduction shall arise:

- Between unrelated parties, the obligation to deduct at source shall arise at the earlier of when payment is made or the amount due is otherwise settled;
- Between related parties, deduction shall be made at the time of payment or when the liability is recognized, whichever is earlier;

¹ Regulation 2 of the Regulations.

- While the amount deducted on any payment to a non-resident person shall be the final tax except where the income is liable to further tax.
- This new regulation addresses the ambiguity pertaining when WHT deductions is to occur.

c. Transactions exempted from deduction at Source²

- Across the Counter transactions,
- Any dividend payment or distribution to a Real Estate Investment Trust;
- Compensating payments under a Registered Securities Lending Transaction,
- Interest and fees paid to a Nigerian Bank by way of direct debit of the funds which are domiciled with the Bank
- Any payment in respect of profit or income which is exempt from tax
- Insurance premium
- Winnings from a game of chance or a reality show with contents designed exclusively to promote entrepreneurship, academics, technological or scientific innovation.
- Interests and fees paid to a Nigerian Bank by way of direct debit of the funds domiciled with the Bank and
- Out of pocket expenses directly incurred by supplier which is separate from contract fees;

d. Deductions to be receipted³: The new Regulations provides that it is the customer's responsibility, not the tax authority's, to provide a receipt for tax deducted to the vendor. The vendor can use this receipt to prove the withholding tax (WHT) was deducted when presenting it to the tax authority and will receive credit for it, regardless of whether the customer has remitted the WHT. If customers issue receipts for WHT that has been deducted but not remitted, they will be held responsible for the WHT as part of their tax obligation, along with any applicable interest and penalties as stipulated by the law.

e. New WHT Rate: The Regulations establish varying withholding tax (WHT) rates based on the recipient's status as a company or individual, as well as their residency.

- For resident recipients, both corporate and non-corporate, the WHT rate on commission, consultancy, technical, management, and professional

² Regulation 8 of the Regulations.

³ Regulation 6 of the Regulations.

fees has been reduced to 5%. Conversely, non-resident corporate and non-corporate recipients are subject to a fixed WHT rate of 10% for these fees. Additionally, the WHT rate for the supply of goods or materials (excluding those supplied by manufacturers or producers) has been lowered from 5% to 2%.

- Brokerage fees are taxed at 5% WHT for residents and 10% for non-residents. WHT on fees for resident directors has increased from 10% to 15%, while non-resident directors' fees are now taxed at 20%. In contrast, the WHT rate on royalties for both resident and non-resident individuals have been reduced to 5% from the previous 10%.
- In addition, the Regulations introduce a 10% WHT on compensation for loss of employment for both resident and non-resident individuals. Finally, non-resident entertainers and sports persons are now subject to a 15% WHT on fees earned in Nigeria.

CONCLUSION

The new Regulation set out the rules for the deduction of tax from payments to taxable persons under the Capital Gains Tax Act, the Companies Income Tax Act, Petroleum Profits Tax Act and the Personal Income Tax Act in respect of specified transactions.

Unlike the previous WHT Regulations, there were 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 issues.

The new WHT Regulations have introduced significant changes which reduced uncertainties and administrative burden on taxpayers and are generally beneficial to taxpayers.

In addition, it should also be noted that the enabling tax laws empower the Minister to issue regulations related to the administration of tax deductions at source, but they do not explicitly authorize the Minister to modify the statutory withholding tax (WHT) rates. Subsequently, such modifications could be subject to legal challenge, as they may exceed the Minister's designated authority.