

# **UNVEILING THE TRANSACTIONAL TAXES IN THE NEW TAX LAWS: VAT AND WHT TAXES DEMISTIFIED**

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# WHT Module

## Withholding Tax (WHT) Compliance



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# Introduction

## n<sub>1</sub>

- Government agencies are generally exempted from income tax payment.
- However, they act as agent of the NRS in collection and remittance of transaction taxes (WHT and VAT) as well as PAYE.
- The relevant transaction taxes that government agencies have responsibility to deduct at source are:
- Withholding tax on contract and other payments @ 2%, 5%, 10%, 15% or 20% as appropriate

# INTRODUCTION<sub>2</sub>

01

WHT is an advance payment of taxes.

02

It is deductible at source from certain payment.

03

It is cashflow tool for government.

04

Reduces leakages and source of information.

# INTRODUCTION<sub>3</sub>

Tax is a compulsory levy imposed by government on the income, capital or consumption of its citizens for the purpose of raising revenue to provide basic and essential amenities and services to the entire citizens of that country

In the recent years, the Nigerian economy and public finances have been dealt a heavy blow by the fall in oil prices, theft of crude oil and depleted foreign exchange reserves. With the decline in oil revenue, focus has now shifted to taxation as the main sustainable sources of government revenue.

**Section 24 (f) of the 1999 constitution-**  
“it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly”.

It is backed by Law and has punitive measures for all defaulters.

# Concept of Withholding Tax (WHT)<sup>1</sup>

- Withholding Tax is not a separate tax, but an advance payment of income tax.
- MDAs and other contract awarding organisations are mandated to deduct WHT at the applicable rate and remit same to the relevant tax authority; FIRS for corporate entities and SBIR for individuals and enterprises.
- WHT is to be deducted at the point of any payment to contractors be it full or instalment payments.
- It should be noted that the exemption applies to income/profit of the organisation and does not include passive or unearned income.

# Concept of Withholding Tax (WHT)<sup>2</sup>

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- **Definition**

- WHT is an advance payment of income tax which is deductible at source on specified transactions.
- In order to reduce the incidence of tax evasions, the law empowers NRS and the State IRS to appoint any person or companies to act as their agent for the purpose of collecting taxes by withholding certain portion of tax on payments as withholding tax and remit same to the tax authorities.
- The WHT so withheld can be applied as tax credits against income tax liability.

# Concept of Withholding Tax (WHT)<sup>3</sup>

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WHT is not a separate tax but an advance payment of income tax. WHT deducted from payments are available to offset future income tax liability of taxpayer who suffered such deductions.

The major objectives of WHT are to reduce incidence of tax evasion and guarantee year-round cash flow from taxation to government.

The relevant tax authority to which WHT remittance and returns are made is either Nigeria Revenue Service (NRS) or State Internal Revenue Service (depending on legal status of the vendor)

Applicable rates depend on the nature/type of transactions, residency of vendors, and status of the vendors – Incorporated or unincorporated.

# Changes Introduced in the WHT Regulation<sub>1</sub>

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WHT at twice the normal rate if the vendor/supplier does not have TIN except in passive income.

Receipts to be issued by the person making deductions. The vendor/supplier can get credit from tax authority even if the customer has not remitted.

WHT receipts as well as credits handled by customers.

# Changes Introduced in the WHT Regulation<sub>2</sub>

Who should deduct WHT: Businesses, organizations (including those exempt from tax), government ministries, departments and agencies, and their payment agents.

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: WHT is to be deducted at the earlier of when payment is made or the amount due is otherwise settled

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

When to pay WHT: 21st of the following month for payments to the FIRS or 30th of the following month for payments to the relevant SIRS, CGT & PAYE to SIRS not later than 10<sup>th</sup> day of the month following

# Changes Introduced in the WHT Regulations<sub>3</sub>

**10.—(1)** The following transactions are exempt from deduction at source —

(a) compensating payments under a Registered Securities Lending Transaction in line with section 81(8) of the Companies Income Tax Act ;

(b) 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 ;

(c) across-the-counter transactions as defined under these Regulations ;

(d) interest and fees paid to a Nigerian bank by way of direct debit of the funds which are domiciled with the bank ;

(e) goods manufactured or materials produced by the person making the supply ;

(f) imported goods where the transaction does not create a taxable presence in Nigeria for the foreign supplier ;

(g) any payment in respect of income or profit which is exempt from tax ;

(h) telephone charges, internet data and airline tickets ;

(i) out-of-pocket expense that is normally expected to be incurred directly by the supplier and is distinguishable from the contract fees ;

(j) insurance premium ;

(k) 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 ;

(l) commission retained by a broker from money collected on behalf of the principal in line with the industry norm for such transactions ; and

(m) winnings from a game of chance or a reality show with contents designed exclusively to promote entrepreneurship, academics, technological or scientific innovation.

# WITHHOLDING TAX (WHT): Rates

Rates (CITA S 78 - S 81, PITA S 68 - S 72, and WHT Regulations )

## New Rates the WHT Regulation<sub>1</sub>

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

## Withholding Tax (WHT): Rates

**Rates** (CITA S 78 - S 81, PITA S 68 - S 72, and WHT Regulations )

**New Rates  
the WHT  
Regulation,**

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

## Withholding Tax (WHT): Rates

### WHT Rate for Road, Bridges, Building and Power Plant Construction Contract

Commencement Period	Rate
Prior to Jan. 1, 2015	5%
Jan. 1, 2015 to Nov. 8, 2016	2.5%
Nov. 9, 2016 to Jan. 12, 2020	5%
Effective Jan. 13, 2020 (FA 2019)	2.5%

**Effective from January 2025, the WHT on these was reduced to 2%**

# Withholding Tax (WHT): Obligation to Deduct and Remit

## WHT Regulations

### Persons required to deduct WHT are:

- Companies,
- Organisations or establishments that operate Pay-As-You-Earn Scheme.
- Government departments,
- Parastatals, Statutory bodies, institutions and,
- Other establishments approved for operation of Pay As You Earn system whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.

## Currency of Remittance

- The currency in which the tax is deducted is the currency with which it should be paid to the relevant tax authority.  
(currency of remittance is the currency of transaction)

# Withholding Tax (WHT): Filing Requirements

- **Filing requirements**
  - WHT returns and amount deducted are required to be remitted to the appropriate tax authorities (NRS or State IRS) on monthly basis.
  - Remittance is due to the Nigeria Revenue Service (NRS) within 21 days after the duty to deduct WHT arose.
  - Remittance is due to the appropriate State Internal Revenue Service (SIRS), within 30 days after the duty to deduct WHT arose in the case of individuals and unincorporated entities.
  - The following should be contained in the monthly WHT returns submitted to tax authority:
    - A schedule showing vendor/vendor's TIN, name and address, type of contract, rate applied, amounts, and evidence of payment.
    - For WHT returns to NRS, the schedule of WHT deducted must be submitted in electronic form and must contain specific information such as the TIN of the various vendors from whom the tax has been deducted.

# Withholding Tax (WHT): Offences & Penalties

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- **Failure to Deduct Tax:** Penalty of 10 per cent of the tax not deducted.
- **Failure to Remit Deductions:** Unremitted tax deductions are recoverable by the tax authority, with penalties and annual interest.
- **Issuing Receipts of WHT without Remittance:** The Tax Authority credits beneficiaries for unremitted taxes and transfers liability to the person who made the deduction, with applicable penalties and interest.
- The Accountant-General of the Federation shall have power to deduct at source, from its budgetary allocation, un-remitted taxes due from any Ministry, Department or Government Agency and transfer such deduction to the relevant State upon request

# VALUE ADDED TAX- Introduction

- Value added tax (VAT), is a consumption tax imposed on supply of all taxable goods and services
- The VAT rate on taxable goods and services is 7.5% of the value of taxable good and/or service. Zero rated goods and services are taxed at 0%.
- A non-resident company that makes a taxable supply of goods or services to Nigeria shall register for the tax with FIRS and by the simplified compliance regime guidelines, Non-Resident Suppliers (NRS') have been appointed as collection agents for VAT.
- By this appointment, NRS of electronically supplied services (ESS) are now required to register for VAT, charge, collect, remit, and file returns with the FIRS. Where the service is not electronically supplied, the person to whom the NRC renders the taxable service to in Nigeria is required to withhold and remit the tax directly to the FIRS in the currency of payment.
- Time of supply of goods and services is earlier of; the date of issuing invoice or receipt, or payment of consideration payment or consideration is due or received by the supplier.
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# Some Key Changes in VAT

- Under the NTA, the definition and description of input VAT has been modified. Input VAT now refers to the VAT paid by a taxable person to a supplier for taxable supplies made to that taxable person. By Section 156(5) of the NTA, input VAT can be claimed on all supplies.
- VAT refunds must be processed by the taxpayer within 12 months of the transaction that led to the refund. The Service is required to issue the refund to the taxable person within 30 days of receiving the request. Alternatively, the amount may be used to offset any future VAT liability of the taxpayer.
- The NTA updates the list of exempt and zero-rated supplies, by transferring numerous items from the exempt category to the zero-rated category. This is captured in Sections 186 and 187 of NTA.
- Section 153(1) of the NTA requires taxable persons to maintain sequential invoice numbering.
- Section 156 of the NTA also maintains that the payment of VAT should continue to be on a cash basis
- The NTA requires that VAT, whether collected, withheld, or self-accounted for, must be remitted to the service by the 14th day of the month following the month in which the transaction occurred. This deadline may be adjusted as prescribed by the Service, according to Section 155(4) of the NTA.

# Some Key Changes in VAT contd

- The NTA requires that connected persons charge tax when a service commences, as outlined in Section 147(2) of the NTA. This means that, for services provided between connected persons, the time of supply is considered to be at the moment the provision of the service begins
- VAT must be assessed and paid in the currency of transaction. Also, the NTAA specifically emphasized that **royalties** should be remitted in the currency of transaction (if not Nigerian Naira), **or the Naira equivalent at the prevailing exchange rate at the official foreign exchange market.** However, any returns related to **petroleum operations** must be remitted in **US Dollars** as stated in sections 39(1) to (3) of the NTAA.
- The New Tax Act (NTA) eliminates the previous threshold requirement for tax registration for VAT purposes that was established under the VATA. Instead, it now mandates automatic tax registration, as outlined in Section 4 of the Nigerian Tax Administration Act (NTAA).

# Input VAT claim treatment

## Input VAT exceeds output VAT

According to Section 156(1)(b), where the input VAT incurred by a taxable person exceeds the output VAT collected during the relevant tax period, the taxable person is entitled to utilize this excess as a credit against future VAT liabilities.

## Claiming of refund

Where the excess input VAT is not utilized as a credit, the taxable person may request a refund upon provision of such information or documents such as proper VAT returns, documentation, and the Service's verification.

## Qualifying input VAT

Where input VAT is incurred on supplies used for both taxable and non-taxable supplies, **only the proportion relating to taxable supplies may be deducted.**

## Zero-rated supplies & exported goods

Where taxable supplies are charged at 0% (Section 187), such as exported goods and services, the output VAT collected is zero, but input VAT is still paid on purchases, leading to input VAT excess and thus refund claims.

# VAT exemptions

- Oil and gas exports
- Crude petroleum oil and feed gas for all processed gas
- Money or securities including interest in money or securities.
- Baby products
- Locally manufactured sanitary towels, pads or tampons
- Shared passenger road-transport service
- Purchase, hire, rental or lease of tractors, ploughs and other equipment used for agricultural purposes;
- Supplies consumed by an approved entity in the export processing or free trade zones, provided that the supplies are consumed on its approved activity
- Goods purchased for use in humanitarian donor funded projects
- Good and services supplied to a diplomatic mission, diplomat, or person recognized under the Diplomatic Immunities and Privileges Act whose activity is in public interest, and not for profit
- Assistive devices and disability-related products including hearing aids, wheelchairs, and braille materials

# Other VAT exemptions contd

- Government licences
- Plays and performances conducted by educational institutions as part of learning
- Military hardware, arms, ammunitions and locally manufactured uniforms supplied to armed forces, para-military and other security agencies of a Nigerian government
- Land or building including interest in land or building
- **Excluded items under the 11th Schedule to the NTA:**
  - (a) Petroleum products;
  - (b) Renewable energy equipment;
  - (c) Compressed natural gas (CNG);
  - (d) Liquefied Petroleum Gas (LPG); and

# Other VAT exemptions contd

## **Other exempted items under the VAT Modification Order 2024 (VATMo 2024)**

The following items included in the VATMo 2024 (which was saved by the NTA) will still be considered as VAT exempted:

- a) Equipment and infrastructure related to the expansion of CNG including conversion kits;
- b) Equipment and infrastructure related to the expansion of LPG equipment including conversion kits;
- c) Domestic Liquefied Natural Gas (LNG) processing facilities  
And equipment;
- d) Electric vehicles, parts, semi-knock-down units for the assembly of electric vehicles ;

- e) Biogas and biofuel equipment and accessories for clean cooking and

# Zero-based supplies

- Basic food items
- Medical services
- Educational books and materials
- Fertilizers
- Locally produced agricultural chemicals
- Locally produced veterinary medicine
- Locally produced animal feeds
- Agricultural seeds and seedlings
- Exported goods excluding oil and gas
- Exported services
- All medical and pharmaceutical products including *\*medicinal herbal products\**
- Electricity generated by generation companies (GENCOs) and supplied to National Grid or Nigeria Bulk Electricity Trading Company (NBET)

# Zero-based supplies contd

- Electricity transmitted by Transmission Company of Nigeria (TCN) to Electricity Distribution Companies (DISCOs);
- Tuition relating to nursery, primary, secondary or tertiary education;

## **New inclusion:**

- *\*Medicinal herbal products\**
- Live cattle, goats, sheep, and poultry
- Exported incorporeal property
- Medical equipment
- Electric vehicles
- Parts, semi-knock-down units for the assembly of electric vehicles

# VAT Administration

## •Returns of VAT

- Taxable person must submit a VAT return to the service on or before the 21st day of the following month.
- Small businesses can opt out of exemptions by notice but this exemption for small companies does not apply to petroleum companies.
- Any return must detail taxable supplies consumed, regardless of where submitted.

## •VAT Fiscalisation

- Upon the introduction of the Electronic Fiscal System (EFS), anyone engaging in taxable supplies must use the EFS to record and report all transactions.
- Taxable individuals must maintain accurate records of EFS transactions. The Service will specify the fiscalisation system and create a transition plan.

## VAT Refund

- A taxable individual entitled to a VAT refund must submit a request to the Service using the designated form.
- This request must be made within 12 months following the transaction that led to the refund; otherwise, it will no longer be valid.
- The Service is required to process the refund within 30 days, or the amount can be applied against any tax liabilities of the taxpayer.

## •Compliance considerations

- Maintain clear documentation and contracts to determine supplier status and place of supply.
- Use VAT-compliant invoicing and ensure proper deduction.
- Ensure that VAT remittance timelines and requirements are met.

# VAT Penalties- Offences & penalties

- **Failure to register-** ₦50,000 in the first month, ₦25,000 for each subsequent month
- **Failure to notify the tax authority of change of address or cessation of biz-** ₦100,000 in the first month, ₦5,000 for each subsequent month
- **Failure to submit VAT returns on time-** ₦100,000 in the first month, ₦50,000 for each subsequent month
- **Failure to remit Vat on time-** VAT due + 10% of the VAT due + interest at the CBN minimum rediscount rate.
- **Failure to use fiscalisation system-** ₦200,000 + 100% of the tax due and an interest at the prevailing CBN Monetary Policy Rate (MPR) per annum
- **Failure to collect VAT on taxable supplies-** 40% of the VAT amount not collected
- **Failure to keep proper records-** ₦50, 000 in the case of a company and ₦10,000 in the case of persons other than a company
- **Making false claims-** 100% of that amount + interest at the prevailing CBN MPR
- **Failure to submit returns-** ₦100,000 in the first month, ₦50,000 for each subsequent month
- **Failure to remit tax-** The amount collected + 10% penalty of tax not remitted + interest at the prevailing CBN MPR

# Conclusion

- The Deduction of Tax at Source (Withholding) Regulations, 2024 provide clearer guidelines for persons doing business in Nigeria, making it easier to comply with tax obligations. It is therefore very imperative for all stakeholders to take note of the key provisions, especially on rates, exemptions, and deadlines, to avoid penalties.
- The new laws has also reformed the VAT system but expanding the zero based items, exemption of some basic items required by the citizens and introduction of the fiscal system to improve efficiency in collection and block revenue leakages
- Tax practitioners/professionals should be very much abreast with the WHT regulations and the Nigeria Tax Act (NTA) in order to enhance the compliance level of their clients and thereby contribute to voluntary compliance and ultimately enhanced revenue for National development.

