

WITHHOLDING TAX ON CONSULTANCY, CONTRACTUAL AND AGENCY FEES

Applicable rates	Professional %	Contractual %	Agency %
Residents			
15 th June 2000 to 30 th June 2002	2	2	2
1 st July 2002 to 30 th June 2003	10	5	10
1 st July 2003 onwards	5	3	5
Applicable rates			
Non - residents	20	20	20

With effect from 1st July 2004, the rate applicable to citizens of the East African Community partner states in respect of consultancy fees is 15%.

With effect from 16th June 2006, withholding tax is payable on management fees at a rate of 5% and also on assets leased under the Income Tax (Leasing) Rules, 2002 at a rate of 3%.

With effect from 13th June 2008, professional fees was amended to include training fees.

Lower rates may apply where tax treaties are in force. Currently treaties are in force with Canada, Denmark, India, Norway, Sweden, Zambia, United Kingdom and Germany.

- **Threshold for deducting WHT**

- **Prior to 15th June 2000 WHT was to be deducted:**

- On all contractual payments in excess of Shs. 24,000 made to unregistered individuals.

- **Between 15th June 2000 and 1st July 2003 WHT was to be deducted:**

- On all payments of Shs. 24,000 or more per month to an individual without a PIN or business name.
 - On all payments of Shs. 200,000 or more per month to any person with or without a PIN.

- **With effect from 1st July 2003 WHT is to be deducted:**

- On all payments of Shs. 24,000 or more per month.
 - **Due date for payment** : 20th of the month following the month in which the deduction is made.

- **Definitions**

- **Management or professional fees** means a payment made to a person, other than a payment made to an employee by his employer, as consideration for managerial, technical, agency, contractual, professional or consultancy services however calculated.
- **Consultancy fees** are payments made to any person for acting in an advisory capacity or providing services on a consultancy basis.
- **Agency fees** are payments made to a person for acting on behalf of any other person or group of persons or on behalf of the government and excludes any payments made by an agent on behalf of a principal where such payments are recoverable.
- **Contractual fees** are payments made for work done in respect of building, civil or engineering works.
- **Training fees** are payments made in respect of a business or user training services designed to improve work practices and efficiency of an organisation.

- **Records to be maintained**

- The person making the payment should record on a tax deduction card the name of the payee, PIN, gross amount paid, nature of payment and the amount of tax deducted.
- The amount of tax deducted should be paid by the due date accompanied by the deduction card and a deposit slip. The code on the deposit slip should be correctly completed and if in doubt, consult us or the cashiers at KRA. The tax department requires the original receipt as proof of payment.
- Upon payment, a certificate should be furnished to the person on whose account the tax is deducted, showing the gross amount paid and the total tax deducted.
- By 28th February of the following year, an annual return in the prescribed form is required to be submitted to the KRA. Where a person ceases to carry on business, the return is to be submitted within one month of cessation.

NB: Formats of the tax deduction card, deposit slip, WHT certificate and the year end returns are available from either KRA offices or our offices.

- **Contentious areas**

- **Pay point:** This issue on hand is whether monthly provisions for professional and management fees and other charges are subject to WHT. The Income Tax Act defines "Paid" to include distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person. While our view is that payments do not crystallise unless the third party is in a position to access the funds, the KRA is of the view that WHT is payable immediately upon the provision being made. The important test to apply in determining whether or not WHT is applicable is to ascertain when the amount became due contractually. If the amount has become due as per the contract, then WHT becomes due whether or not the payment is made even if it is not accrued.

- **Fines and penalties**

- Failure to comply with the provisions of the Income Tax (Withholding Tax) Rules, 2001, would result in a fine not exceeding Shs. 100,000, or to an imprisonment for a term not exceeding six months, or both. This is in addition to penalty and interest for non-payment and submission of returns.
- With effect from 15th July 2004, the penalty for failing to withhold tax or to remit it will be 10% of the amount of tax involved subject to a maximum of Shs. 1 million. In addition, interest is charged at 2% per month for each month the amount remains unpaid.

THE WITHHOLDING VAT AGENCY SYSTEM

In order to improve compliance with the VAT Act, the Commissioner has appointed VAT withholding agents:

- **Effective date:** 1st October 2003 - Government ministries, departments, parastatals, local authorities and other public institutions.
1st April 2004 - Banks and financial institutions, co-operative societies, insurance companies and brokers and hospitals.
1st September 2004 - All exporters who are in a continuous VAT refund position.
- On 19th September 2007 the categories of exporters and suppliers to exporters, co-operative societies, private hospitals, insurance brokers and agents and public and private schools were removed from the list of withholding VAT agents.
- **Obligations of agents**
 - The agents are required to operate a two-cheque system when paying invoices for all local taxable supplies, whereby the supplier is paid the net amount excluding VAT and the VAT portion is withheld and paid directly to the Commissioner. The system will, therefore, not interfere with the current suppliers credit terms.
 - VAT shall be withheld on all payments irrespective of whether VAT was charged by the supplier or not, except in cases of zero-rated and exempt goods and services. The full list is contained in Public Notices 41, 42 and 43. When computing VAT on invoices where VAT is not separately shown, the formula of $X - (X/1.16)$ should be used, where X is the value of the taxable supplies.
 - Each agent is required to apply for registration using form VAT 30 and on registration will be issued with a unique identification number through VAT 31 (Registration Certificate).

- The agents will account for VAT withheld through the **Withholding VAT Return (VAT 32)** indicating the total amount payable on the return and a list of all suppliers on whose behalf the payment is made on the reverse side of the form. Withheld VAT is required to be remitted weekly on Monday of each week or as agreed with KRA.
 - On withholding VAT, the agent shall immediately issue the supplier with a **Certificate Slip (VAT 32A)** which will bear the **Withholding VAT Paid Reference Number**.
 - Any person without lawful authority who fails to comply with the above shall be guilty of an offence and liable to a fine not exceeding Shs. 15,000 or imprisonment for a term not exceeding six months, or both. In addition, the person will be liable to pay the tax due from his own resources.
- **Suppliers**
 - Suppliers should continue submitting VAT returns and accounting and paying the VAT on the due dates.
 - The Certificate Slip (VAT 32A) shall be used to deduct the withheld VAT from the VAT due in the next return. It has been clarified by the VAT department that the total of all the VAT 32A Certificates should be deducted under line 13 on the VAT 3 Return supported by a schedule. Taxpayers are not required to submit the VAT 32A Certificates or copies with the VAT returns, but should keep them for verification during routine VAT audits.
 - If the supplier is in a continuous refund position, the excess shall be paid by the Commissioner under the provisions of the VAT Act. Such persons will have to make a refund claim within 12 months. Claims in excess of Shs. 1 million have to be supported by an auditors' certificate.
 - Where the supplier is not registered, he shall be required to register immediately notwithstanding the VAT threshold, in order to deduct the withheld VAT. Once registered, he must charge VAT on all other vatiable goods and services and deduct all input VAT. Where the supplier supplies both taxable and exempt goods, the restrictions on deduction of input VAT apply.

CAVEAT

This tax bulletin has been prepared by RSM Ashvir and contains an overview of the withholding tax regulations and the withholding VAT agency system. Whilst every care has been exercised in ensuring the accuracy and the completeness of the information, we will not accept any liability for any errors or omissions contained herein whether caused by negligence or otherwise, or for any loss, however caused or sustained by anyone that places reliance on the contents.

This tax bulletin is for the exclusive use of the clients and staff of RSM Ashvir and no part may be reproduced or published without our prior written consent. The information contained herein is for guidance only and should not be used as a basis of decision-making without appropriate legal and professional advice.