The Impact of the New WHT Regime on Business Efficiency and Compliance

Background

As part of the ongoing fiscal policy and tax reforms, the Minister of Finance and Coordinating Minister of the Economy, Mr. Olawale Edun recently signed the new regulations, Deduction of Tax at Source (Withholding) Regulations, 2024 effective 1 July 2024. The regulations seek to address some of the pertinent complexities around WHT compliance in Nigeria.

Withholding tax (WHT) is an advance payment of income tax and is deducted at source on payments for specific transactions. It was introduced in Nigeria in 1977 to minimize tax evasion and ensure a steady flow of revenue to the government by expanding the tax base. It is also an efficient way of collecting taxes from non-resident persons who have tax presence in Nigeria.

However, over time, the WHT system has become more ambiguous and complicated, imposing an excessive compliance burden on some businesses and straining the working capital.

Legal basis

In introducing the regulations, the Minister exercised his powers based on the provision of Sections 81(9) of the Companies Income Tax Act (CITA), Section 56 of the Petroleum Profit Tax Act (PPTA), Section 73(6) of the Personal Income Tax Act (PITA), and other enabling legislations.

Key Changes introduced by the new Withholding Tax Regulations

The regulation has introduced significant changes toward the administration of withholding tax in Nigeria which specifically include the following:

1. Exemption from the obligations to deduct WHT

Small businesses, as defined under section 105 of CITA, and other unincorporated bodies of equivalent attributes are now exempted from the obligation to deduct WHT at source provided that –

- The supplier has a valid Tax Identification Number (TIN)
- The value of the transaction is N2,000,000 or less during the relevant calendar month.

2. Transactions exempted from WHT Deduction

The Regulations clearly noted that exemption from WHT deduction at source shall not be deemed as an exemption from the relevant income tax except as provided in the enabling law. However, the following transactions are exempted from WHT deductions:

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

forv/s mazars

- Across-the-counter transactions which include transaction carried out between parties without an established contractual relationship or any prior formal contracting arrangement and in which payment is made instantly in cash or on the spot via electronic means.
- Interest and fees paid to a Nigerian bank by way of direct debit of the funds which are domiciled with the bank.
- Goods manufactured or materials produced by the person making the supply.
- Imported goods where the transaction does not create a taxable presence in Nigeria for the foreign supplier.
- Any payment in respect of income or profit which is exempt from tax.
- Out-of-pocket expense that is normally expected to be incurred directly by the supplier and is distinguishable from the contract fees.
- Insurance premium.
- 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.
- Commission retained by a broker from monies collected on behalf of the principal in line with the industry norm for such transactions.
- Winnings from a game of chance or a reality show with contents designed exclusively to promote entrepreneurship, academics, technological or scientific innovation.

3. Eligible Transactions and Applicable Rates

With the new regulations, the applicable WHT rates have been reviewed accordingly for businesses with low margins. The Tabled below summarises the revised rates and the eligible transactions.

Transactions	Reduced rates for residents		Rates for non-residents	
	Corporate	Non-corporate	Corporate	Non-corporate
Dvident, Interest	10%	10%	10%	10%
Royalty	10%	5%	10%	5%
Rent, Hire or lease	10%	10%	10%	10%
Commission, consultancy, technical, management and professional fees	5%	5%	10%	10%
Supply of goods or materials other than by the manufacturer or producer	2%	2%	N/A	N/A
Co-location and telecommunication tower services	2%	2%	5%	5%
Supply or rendering of services other than those specifically listed in this Schedule	2%	2%	5%	5%
Brokage fee	5%	5%	10%	10%
Directors' fees	N/A	15%	N/A	20%
Compensation for loss of employment	N/A	10%	N/A	10%
Entertainers and sportspersons	N/A	N/A	15%	15%
Winnings from lottery, gaming, reality shows, etc.	N/A	5%	N/A	15%
Construction of road, bridges, building and power plants	2%	2%	5%	5%
Any other form of construction and related activities	5%	5%	10%	10%

Kindly note that the above schedule has been updated to include additional transactions (Brokerage fee, Compensation for loss of employment, Entertainers/Sportspersons and Winning from lottery, gaming, realty shows, etc.) for WHT purposes.

4. Obligation to deduct

The duty to deduct WHT at source will now arise at the earlier of when payment is made or the amount due is otherwise settled, except in the case of a payment due between related parties which remains the earlier of when payment is made or when the liability is recognized.

5. Deduction not a separate tax

The regulation also clarified that WHT is not a separate tax or an additional cost of the contract or transaction. Thus, it should not be included in the contract price but treated as an advance or final tax of the supplier as the case may be.

We believe this aspect will address cases where suppliers normally quote contract prices as net of WHT, thus forcing the customers to bear the extra cost of the WHT.

6. Issuance of receipts for WHT deducted

Going forward, persons who deduct WHT from any payment are now required to issue a receipt, in the format provided, to the beneficiary upon remittance to the relevant tax authority, this will enable the recipient to claim tax credit for the amount deducted by submitting the receipt to the relevant tax authority.

7. Offences

The regulations also clarify the penalty applicable to persons who fail to deduct WHT or having deducted, fail to remit to the relevant tax authority. The penalty is as follows:

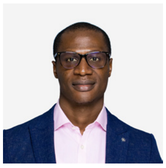
- For persons who fail to deduct the required amount, an administrative penalty and a one-time annual interest on the amount not deducted will be imposed
- For persons who deducted the required amount but failed to remit it, the penalty will include the deducted amount, an administrative penalty, and annual interest.

Conclusion

This is a welcome development in the business cycle, particularly to SMEs and Manufacturers who have always seen withholding tax (WHT) as an excessive tax burden considering its impact on their working capital.

While many of the issues posed by the previous withholding tax regime have now been clarified and properly addressed, there are other aspects of the new Regulations that require further clarifications. These include:

- Withholding tax refund mechanism, which remains a significant issue for companies with no assessable profits and no tax payable.
- A clearer understanding on the implementation of the exemption of transaction value of N2million or less in any calendar month.
- Since the National Identification Number (NIN) or the RC Number is required as an alternative to the Tax Identification Number (TIN) when making remittance, should twice the rate specified in the schedule still be applicable on eligible transaction where the recipient has no TIN?



Peter Nwofia
Partner, Tax and Regulatory Services
peter.nwofia@mazars.com.ng

Ajibola Sogunro
Director, Tax and Regulatory Services
ajibola.sogunro@mazars.com.ng