



# **GRA**

## **GHANA REVENUE AUTHORITY**

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### **Practice Note on Withholding of Tax under the Income Tax Act, 2015 (ACT 896)**

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## **1.0 TAX LAW**

The Commissioner-General of the Ghana Revenue Authority is empowered under paragraph 2 of the Seventh Schedule of the Income Tax Act, 2015 (Act 896) to issue Practice Notes setting out the interpretations placed on provisions of the Act. Accordingly, this Practice Note is issued in respect of withholding of tax on payments to resident and non-resident persons, payment on investment returns and payments for the supply or use of goods, the supply of works and the supply of services under Sections 115, 116, 117, 118, 119, 120, and Paragraph 8 of the First Schedule of the Income Tax Act, 2015 (Act 896).

## **2.0 PURPOSE**

This Practice Note is issued to provide direction and guidance to officers of the Ghana Revenue Authority, Tax Practitioners, Consultants, Taxpayers and the general public on the acceptable treatment of Withholding Taxes, in order to achieve consistency in the administration of the Act.

It is also intended to address administrative and operational challenges that may arise from the interpretation and scope of withholding of tax from:

- (i) investment returns;
- (ii) supply of goods, works, service fee and contract payment by a resident person to another resident person;
- (iii) payment to non-resident persons;
- (iv) Branch Profit Tax;
- (v) Petroleum Operations;
- (vi) Minerals and Mining Operations.

## **3.0 INTERPRETATION**

In this Practice Note the word “Act” means the Income Tax Act, 2015 (Act 896). Definitions and expressions used in this Practice Note have the same meaning as they have in the Act.

### **3.1.0 Meaning of Goods, Works and Services**

#### **3.1.1 Goods**

“**Goods**” means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services do not exceed the value of the goods themselves;

“Goods” includes movable tangible property, thermal and electrical energy, heating, gas refrigeration, air conditioning, and water, but does not include money.

#### **3.1.2 Works**

“**Works**” is defined to include work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or surface and includes site preparation, excavation, erection including erection of mast for Telecommunication business, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

In this context excavation relates to removal of earth, cutting, digging and scooping during constructional works.

#### **3.1.3 Services**

“**Service**” means the furnishing of labour, time, or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance; and includes consulting, professional and technical services but does not include employment agreements or collective bargaining agreements;

#### **3.1.4 Types of Services**

The payment subject to withholding tax under this Act is for service rendered by the recipient of the payment through a business of that person or a business of any other person. The service fee should be for provision of professional, technical or consultancy services or other similar services of an independent business character other than remuneration for employment.

The services include scientific, literary, artistic, training activities as well as activities of physicians, surgeon, lawyers, engineers, architects, surveyors, dentists, accountants, auditors and other such professional activities.

The services are carried out by the withholder in conducting the business, including an isolated arrangement with a business character.

“Technical Services” means services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance of facilities or plant and similar operations;

Drilling includes activities in Petroleum, mineral and mining operations.

“Consultancy Services” means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organise specific projects, advise clients, conduct training or transfer knowledge;

### **3.1.5 Withholding Obligations**

The provisions of the Act requires a resident person who pays an amount for works or the supply of goods and services to another resident or non-resident person, with a source in Ghana, to withhold tax from the payment at the rate specified under Paragraph 8 of the First Schedule to the Act and pay same to the Commissioner-General

## **4.0 THE APPLICATION OF THIS PRACTICE NOTE**

This Practice Note considers-

- (i) Withholding tax on investment return
- (ii) Types of goods, works and service fee payments that are subject to withholding tax
- (iii) Withholding tax on payment to a non-resident person.
- (iv) Exemptions from withholding tax.
- (v) Types of payments to be included in calculating goods, works and service fees.

- (vi) Source Rule for the Payments.
- (vii) Application to Particular types of Persons.
- (viii) Calculation of withholding tax amounts.
- (ix) Procedures Applicable to Withholding Tax.
- (x) Procedures relating to the issuance of withholding Tax Certificate.
- (xi) Quarterly Returns of List of particulars of payment.

#### **4.1 Withholding from Investment Returns**

A resident person is required to withhold tax at the rate specified under paragraph 8 of the First Schedule of the Act when making payment to another person, of the following returns on investment which has a source in Ghana:

- i) Dividend
- ii) Interest
- iii) Lottery winning
- iv) Natural resource payment
- v) Rent or
- vi) Royalty.

There is no amount set as a threshold limiting the withholding of tax in respect of any of the payments listed above, other than payment of lotto winnings in which case there will be no tax withheld where the amount payable does not exceed GHS 2,592.00

Exclusions: The obligation to withhold tax from returns on investment does not apply to the following:

- (i) payments that are subject to withholding tax under employment income;
- (ii) payments made by an individual, unless the payment is made by the individual in conducting a business;
- (iii) interest paid to a resident financial institution; or
- (iv) payments that are exempt amounts.

The Act under the provisions of Section 115 thus requires all persons including individuals conducting business to withhold tax on payment they make in respect of returns from investment.

## 4.2 Withholding

### 4.2.1 Withholding of Tax on payment of service fee with a source in Ghana to a resident individual.

The Act under the provisions of subsection (1a) of section 116, requires a resident person to withhold tax at the rate provided for in paragraph 8 of the First Schedule where that person pays a service fee with a source in Ghana to a resident individual-

- (i) as fees or allowances, to a resident director, manager, trustee or board member of a company or trust,
- (ii) for part-time teaching, lecturing, examining, invigilating or supervising an examination;
- (iii) as an endorsement fee;
- (iv) as a commission to a resident lotto receiver or agent
- (v) as a commission to a sales or canvassing agent;
- (vi) as a commission to an insurance sales or canvassing agent;
- (vii) for any other supply of services or
- (viii) for any other matter as may be prescribed by Regulation;

This provision requires all resident persons whether a company, trust, partnership or an individual to withhold tax on payment of a service fee with a source in the country to a resident individual.

#### NOTE:

The Withholding tax threshold will not apply in the above instances.

### 4.2.2 Withholding from the supply or use of goods, the supply of service or the supply of works

A resident person other than an individual, shall withhold tax on the gross amount of a payment at the rate provided for in the first schedule when the person makes a payment to another resident person for

- (i) the supply or use of Goods
- (ii) the provision of any Works, or



(iii) the supply of Services,

in respect of a contract between the payee and the resident person, where the contract exceeds 2,000 currency points.

#### **4.2.3 Withholding of tax on Rent Income**

A resident person who makes a payment to another resident person in respect of rental of residential or non-residential premises shall withhold tax as an investment return and the amount of tax withheld shall be treated as a final withholding tax.

However, where a resident person makes payment to another resident person conducting a business of the sale or letting of residential or non-residential premises, the payment shall be treated as a payment for the supply of services and not as a payment on investment return and tax shall be withheld accordingly. The amount withheld shall be treated as tax withheld on account and not as a final withholding tax.

#### **4.2.4 Withholding of tax on Branch Profit Tax**

A non-resident person who carries on business in Ghana through a permanent establishment and who has earned repatriated profits shall pay tax on the repatriated profits for a basis period ending within the year of assessment.

- (1) The tax withheld shall be a final tax on the gross amount of the earned repatriated profits and paid to the Commissioner-General in accordance with the rate specified in the paragraph 8 of the First Schedule of the Act.
- (2) Where in any particular year a permanent establishment incurs a loss, the loss shall be carried forward in accordance with the relevant section of the Act.

NB: Earned repatriated profit of a permanent establishment of a non-resident person is equal to the net profit after tax of that permanent establishment.

#### **Example 1**

XYZ Ghana Branch declares a profit after tax of GHS2,000,000.00 in 2016 year of assessment. The branch profit tax will be as follows:

2016 YEAR OF ASSESSMENT

Profit after tax	2,000,000.00
Branch Profit tax @ 8%	160,000.00

**Example 2**

XYZ Ghana Branch declared a loss of GHS500,000.00 in 2017 year of assessment in its Return which was confirmed by the Commissioner-General.

XYZ limited submitted its returns for the 2018 year of assessment in March, 2019 and below are extracts from the Returns:

Net profit as per accounts	GHS3,000,000.00
Depreciation	GHS15,550.00
Agreed capital allowance	GHS14,850.00

Tax rate is 25%

Required: Determine the Branch Profit tax payable by XYZ Ghana Branch for 2017 and 2018 years of assessment

SOLUTION

2017 YEAR OF ASSESSMENT

In 2017 year of assessment there will be no Branch Profit Tax because there is no profit after tax. However, the loss can be carried forward and deducted from profit in 2018.

2018 YEAR OF ASSESSMENT

Net Profit as per accounts	3,000,000.00
Add: Depreciation	15,550.00
	3,015,550.00
Less: Agreed capital allowance	14,850.00
Adjusted Profit	3,000,700.00
Less Loss from 2017 brought forward	500,000.00
Adjusted Net profit	2,500,700.00

Tax @ 25%	625,175.00
Net profit after tax	1,875,525.00

Branch Profit Tax @ 8%                       $(1,875,525.00 \times 8\%) = \text{GHS}150,042.00$

#### **4.2.5 Withholding Tax for Petroleum Operations**

- (1) A company that conducts petroleum operations shall withhold tax on the gross amount of a payment at the rate provided for in Paragraph 8 of the First Schedule when that company makes a payment to resident or non-resident subcontractor as follows:
  - (a) where a contractor under a petroleum agreement sub-contracts part of the contract obligation to a sub-contractor, the contractor shall withhold tax when making payment to the sub-contractor for the works or services provided by the sub-contractor;
  - (b) where a sub-contractor under a petroleum agreement sub-contracts part of the obligations under the sub-contract, the sub-contractor shall withhold tax when making payment to the sub-sub-contractor for works and services provided by the sub-sub-contractor; or
  - (c) where a contractor under a petroleum agreement sub-contracts part of the contract obligation to a syndicate of sub-contractors, the contractor shall withhold tax from the aggregate amount when making payment to that syndicate.
- (2) A payment to be made to a syndicate of sub-contractors shall be made to the leader of the syndicate for distribution among the members of the syndicate.
- (3) A leader of a syndicate of sub-contractors shall not withhold tax when distributing payment made by the contractor for works or services provided by the members of the syndicate.
- (4) Where a sub-contractor enters into a contract with a non-resident person under which contract the non-resident person is to provide works or services in connection with a petroleum agreement, the sub-contractor

shall notify the Commissioner-General in writing within thirty days of entering into the contract for the Commissioner-General to determine the tax treatment of the income of the non-resident person from that contract in accordance with the Act.

- (5) The tax withheld from the payment to a non-resident person shall be a final tax but a tax withheld from payment to a resident person shall be on account.
- (6) A company that conducts petroleum operations shall withhold tax on payment of dividend to a resident or non-resident company regardless of the percentage of control.

#### **4.2.6 Withholding Tax from Minerals and Mining Operations**

- (1) A company that conducts a Mineral and Mining Operations shall withhold tax under the relevant Sections of the Act.
- (2) A company that conducts a Mineral Operations shall withhold tax at the rate provided for in paragraph 8 of the First Schedule of the Act when the person pays for unprocessed precious minerals located in the Country or won from the country.
- (3) This does not apply to the following
  - (a) payments made by individuals, unless made in conducting a business;
  - (b) payments made by the holder of a small scale mining license to a labourer with respect to winnings from the area covered by the license; or
  - (c) payments received by the holder of a large scale mining lease.
- (4) A resident company or a resident company that is a partner in a partnership that conducts or has conducted a mineral operation shall withhold tax on payment of dividend to a resident or non-resident company regardless of the percentage of control.

### **4.3 Payment to Non-Resident person**

A resident person shall withhold tax at the rate prescribed in the First Schedule when the person makes a payment to a non-resident person in respect of the following where the contract give rise to income in Ghana.

- (i) Insurance premium with a source in Ghana
- (ii) Management and Technical Services Fees
- (iii) Supply or use of Goods
- (iv) Supply of Works
- (v) Supply of Services

Where a payment is made to a non-resident person from a country which has a Double Taxation Agreement with Ghana, the withholding tax rate shall be the rate applicable in the relevant article of the Agreement.

A non-resident person who seeks to rely on an article in a Double Taxation Agreement shall submit a Certificate of Residence from the competent authority of that person's country of residence to the Commissioner-General.

#### **4.4.4 Obligation of Resident Persons who enter into contract with Non-resident persons**

A resident person who enters into a contract with a non-resident person which gives rise to Income from Ghana is required to notify the Commissioner-General within thirty (30) days. The notification shall contain the following:

- (a) The nature of the contract;
- (b) The likely duration of the contract;
- (c) The name and postal address of the non-resident person to whom payments under the contract are to be made; and
- (d) The total sum estimated to be payable under the contract to the non-resident person.

### **4.5 Payments Exempted from Withholding Tax**

The following payments are exempted from withholding tax:

- (i) Premium paid to a resident insurance company.
- (ii) Payment for sale of goods which constitute trading stock of both the vendor and the purchaser.

- (iii) The interest or dividend paid or credited to a holder or member on the investment in an approved unit trust scheme or mutual fund.
- (iv) Interest paid to a resident financial institution.
- (v) Payments made to persons specifically exempted from Income Tax
- (vi) Payments which have been granted exemption from withholding tax by the Commissioner-General.
- (vii) Dividend paid by a resident company to another resident company which controls directly or indirectly at least 25% of the voting power in the company paying the dividend.

NOTE: A sale of goods constitutes a trading stock of both the vendor and the purchaser if the goods are the same goods that are being sold by the purchaser in the same distribution of the product.

#### Example 1

ABC Limited purchases bags of sugar from a wholesaler XYZ Limited for retail to the general public. There will be no withholding tax because sugar is a trading stock to both ABC Limited and XYZ Limited.

#### Example 2

ABCD Limited purchases bags of sugar from XYZ Limited for use as raw material in the manufacture of its final product (“Sweet Drinks”), a non-alcoholic beverage. ABCD Limited will be required to withhold tax when making payment to XYZ Limited because the two companies do not trade in the same goods.

ABCD Limited produces and sells an alcoholic beverage (“Sweet Drinks”) whereas XYZ Limited sells sugar which are not the same goods.

### **4.6 Threshold for Withholding Tax**

- (i) Payment for the supply of goods, works or services which is less than or equal to GHS2,000.00 shall not attract withholding tax.
- (ii) Two or more contracts within the same financial year in respect of the same goods, works or service is to be treated as a single contract for the

purpose of determining whether or not the value of the contract exceeds the threshold of GHS2,000.00 .

#### Illustration of the application of the Threshold

Below are the various contracts awarded to MNB Books and Stationery limited for the 2016 year of assessment by the Ghana Police Service.

1st contract for the supply of stationary costing GHS1,000 in January 2016

2nd contract for the supply of Station Diaries costing GHS900 in March 2016

3rd contract for the supply of additional stationary costing GHS900 in August 16 2016

#### Treatment

The 1st Contract Sum of GHS1,000 does not meet the threshold amount so there will be no tax withheld on the amount.

The 2nd Contract Sum of GHS900 does not meet the threshold of GHS2,000. Furthermore the aggregate value of the 1st and 2nd contracts (GHS1,000 + GHS900 = GHS1,900) also does not meet the threshold of GHS2,000 hence no withholding tax will be charged on payment of the 2nd contract.

The 3rd Contract Sum of GHS900 does not meet the threshold of GHS2,000. However the aggregate value of the 1st, 2nd and 3rd contracts (GHS1,000 + GHS 900 + GHS900 = GHS2,800) exceeds the threshold of GHS2,000 hence the cumulative amount of GHS2,800 will be subject to withholding tax at the applicable rate.

The amount to be withheld as tax will be computed on the cumulative contract sum of GHS2,800 and not on the 3rd contract sum of GHS900.

#### **4.7 Source of Payment**

A payment has a source in Ghana where the payment is attributable to the supply of goods or works and services rendered in Ghana, regardless of the place of payment.

A payment for works has a source in Ghana where the payment is attributable to works undertaken in Ghana, regardless of the place of payment.

Work is undertaken in Ghana where either:

- a) the activities are carried out in Ghana; or
- b) the payer is the Government of Ghana, including all Agencies of the Government except specifically exempted

A service is said to be rendered in the country if the recipient of the service is in Ghana or the service was used in Ghana by a resident person or a Ghanaian permanent establishment.

#### **4.8 Persons Required to Withhold Tax**

The withholding tax deduction applies to payments made by:

- a) A resident person
- b) Permanent Establishment of a Non-Resident person.

#### **4.9 Withholding Tax Base**

##### **4.9.1 Calculation of the withholding Tax**

- a) Withholding Tax shall be computed on the gross amount paid without deduction of expenses or allowances.
- b) The withholding tax base amount shall be exclusive of any Value Added Tax or Communication Service Tax included in the payment amount.

Example:

The cost of work liable for the withholding tax is GHS118 million (inclusive of VAT/NHIL) Determine the withholding tax payable.

Solution

Contract sum (inclusive of VAT/NHIL)	=	118,000,000
Less VAT/NHIL (118,000,000 x 17.5/117.5)	=	17,574,468
Amount Exclusive VAT/NHIL		100,425,532



Withholding Tax @ 5% of 100,425,532 = 5,021,276.60

NOTE: The 5% withholding tax rate is applied on the amount exclusive of VAT/NHIL

## **5.0 DUE DATE FOR PAYMENT OF TAX**

Tax withheld shall be remitted to the Commissioner-General within fifteen (15) days after the end of the calendar month in which the tax was withheld.

Example:

Withholding tax deducted in the month of March 2016 shall be paid on or before the 15th day of April 2016.

## **6.0 Filing of withholding tax return**

- 1) Every withholding agent shall file with the Commissioner-General within fifteen (15) days after the end of each calendar month in which tax is withheld, a return in the manner and form prescribed specifying:
  - a) Payments made by the withholding agent during the period that are subject to withholding tax
  - b) The name, address and Tax Identification Number (TIN) of the withholdee
  - c) Tax withheld from each payment; and
  - d) Any other information that the Commissioner-General may prescribe.
  
- 2) A withholding agent who has no withholding tax obligation for a particular month shall still file a "Nil" return with the Commissioner-General within fifteen (15) days after the end of the month in which the tax was withheld.

**7.0 WITHHOLDING TAX CERTIFICATE**

A withholding agent shall prepare and serve on a withholdee a Withholding Tax Certificate in the form prescribed in Regulation 26 of the Income Tax Regulations, 2016 (LI 2244).

**8.0 TAX CREDIT**

The withholdee of a payment which is not a final withholding tax is regarded as having paid the tax withheld and shall be entitled to a tax credit in an amount equal to the tax withheld and treated as paid for the year of assessment.

**9.0 PARTNERSHIPS**

The tax deducted on a payment made to a partnership shall be allocated to the partners proportionately according to each partner's share of income and treated as having been paid (advance tax) by the partners for the year of assessment.

## **APPENDIX**

### **10.0 CONDITIONS FOR GRANTING WITHHOLDING TAX EXEMPTION**

Persons making payments for supply of goods, works and services are required by the provision of the Income Tax Act 2015, (Act 896) to withhold taxes on the gross amount at various rates and pay same to the Commissioner-General. However, where a good cause is shown or on account of satisfactory tax record of the supplier, the Commissioner-General may exempt in writing that supplier from the withholding taxes due.

The under listed conditions must be met to qualify for exemption from withholding tax:

#### **1. Registration**

- a) The Taxpayer must have registered for all relevant tax types administered by the Commissioner General, including VAT unless exempt under the law.
- b) The following key persons of the Taxpayer must have Tax Identification Numbers (TIN):
  - i) Shareholders
  - ii) Directors
  - iii) Employees
- c) Taxpayers in Large Taxpayer Office (LTO) should have been registered and filed returns on the GRA PORTAL for E-Transaction.

#### **2. Business Records**

The Taxpayer should have kept and maintained adequate and reliable business records in the country.

#### **3. Submission of particulars of contract with a non-resident**

The Taxpayer must have submitted notice of particulars of the contracts entered into with non-resident persons within THIRTY (30) days from the date of entering into such contracts in accordance with Section 116 (11). Discovery of non-compliance with this provision disqualifies taxpayer for at least twelve (12) months.

#### **4. Submission of all tax returns by due date**

- a) The Taxpayer should have submitted all relevant Tax returns administered by the Domestic Tax Revenue Division (DTRD); such as Annual Corporate Tax Returns, Pay as You Earn (P.A.Y.E), Withholding Tax, Value Added Tax (VAT), Communication Service Tax (CST), Excise and other tax type (where applicable).
- b) The following key persons of the Taxpayer should have submitted their returns by the due dates for all relevant years:
  - i) All Directors
  - ii) Expatriate Staff
  - iii) Employees provided with accommodation and / or vehicle.

#### **5. Assessment**

- a) Self-Assessment Estimate: The Taxpayer must have submitted its estimated Chargeable Income and Taxes payable for the current year of assessment.
- b) Provisional Assessment: Where this applies, taxpayer should have been provisionally assessed for the current year.

#### **6. Tax Payments by due dates**

The Taxpayer should have paid all taxes which have fallen due by their due dates (both direct and indirect taxes).

#### **7. Audit**

The Taxpayer should have been audited for a period within the last three (3) years. In addition, repeated infractions of any provisions of the tax laws which has been uncovered by previous audits disqualifies a taxpayer for the grant of exemption or renewal of exemption from withholding tax for at least twelve (12) months

## **8. Dishonoured Cheques**

Taxpayers whose cheques are not honoured by their bankers are disqualified for the next two (2) years from the grant of exemption or renewal of exemption from withholding taxes

## **9. Default in payment terms**

Taxpayers who have defaulted in payment terms arrangement do not qualify for the exemption for at least twelve (12) months.

## **10. Quarterly Submission of List of particulars of payments exempted from withholding tax.**

The Taxpayer should have submitted a list of particulars of all payments which would have suffered withholding tax but for the exemption at the end of every calendar quarter.

## **11. Third Party Information**

Discovery of Third Party information on transactions undertaken by Taxpayer which are not included in Taxpayer's Business Records and/ or Financial Statements disqualifies Taxpayer for at least twelve (12) months.

## **12. Cash-Flow Challenges**

The Taxpayer should demonstrate that suffering withholding tax would lead to:

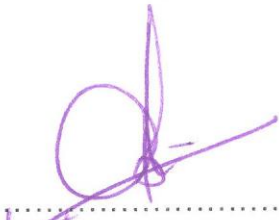
- i) Cash-flow problems, or
- ii) Payment of taxes with part of working capital

## **13. Application**

All applications for exemption from withholding tax should be submitted at the Taxpayer's Tax Office stating the following:

- i) Projected Turnover for the current year

- ii) Projected Chargeable Income for the year
- iii) Projected Tax for the year.

Signed ..... 

Date ..... 06/10/2016

**KWASI GYIMAH-ASANTE  
COMMISSIONER – DTRD  
FOR : COMMISSIONER-GENERAL**