

UNIT 8

WITHHOLDING TAX

8.1 WHAT IS WITHHOLDING TAX?

Under the Income Tax Act, a withholding tax is deductible from certain payments. Withholding Tax is not a tax **but** a means of collecting that tax. Withholding Tax is deductible from a payment by the person who is liable to make payment (the payer) at the point in time the person to whom it is due to be made (the payee) becomes legally entitled to it (date of accrual). The payer is required to pay the tax deductible to the Zambia Revenue Authority by reference to the date of accrual no matter how, when or where payment is made.

8.2 PAYMENTS SUBJECT TO WITHHOLDING TAX

Withholding Tax is deductible under the provisions of sections 81, 81A and 82A, and applies in respect of the following payments:

- (a) dividends – section 81;
- (b) payments to non-resident contractors – section 81A;
- (c) lump sum payments from approved funds – section 82;
- (d) management or consultancy fees – section 82A;
- (e) interest and royalties from a source within or deemed to be within Zambia – section 82A;
- (f) rent from a source within Zambia – section 82A;
- (g) commissions – section 82A;
- (h) public entertainment fees paid to non-resident persons – section 82A; and
- (i) winnings from gaming, lotteries and betting.

Dividends – section 81

According to section 81(1) of the Income Tax Act, every company incorporated in Zambia is required to deduct from every payment of dividend, other than a dividend paid to Government, tax at the rate specified in Part III of the Charging Schedule and to account for such tax.

A payment of a dividend shall be deemed to be made on the day the dividend accrues to the shareholders as provided in section 5(2)(a) of the Income Tax Act, i.e. on the day of the passing of the resolution approving the payment of the dividend, provided that where the resolution states that the dividend is to be paid to shareholders on a future date, then the dividend is deemed to accrue on that future date.

A dividend is defined under section 2 to mean ‘any amount distributed or credited by a company to its shareholders, or any amount deemed to have been distributed.’

The rate of withholding tax on dividends is 15% and it is the final tax for residents and non-residents.

Withholding tax on dividends paid by companies carrying on mining is 0%.

Payments to non-resident contractors – section 81A

These are payments made to non-resident contractors who are engaged in construction and haulage operations. Section 81A (1) of the Income Tax Act requires every person or partnership on making any payment to or on behalf of a non-resident contractor in respect of construction or haulage operations to deduct tax from such payment before making any other deductions, irrespective of whether such payment is made within or outside Zambia, and to account for such tax.

According to section 81A (2), a ‘non-resident contractor’ means;

- (a) an individual who is neither resident nor ordinarily resident in Zambia; or
- (b) any other person or partnership which is not resident in Zambia and does not have a permanent establishment in Zambia.

Construction operations include:

- (a) the erection, alteration, maintenance, repair, extension, demolition or cleaning of any building or structure, whether permanent or not;
- (b) the installation in any building or structure of heating, lighting, lift, air conditioning, ventilation, power, drainage, sanitation, water, fire protection or like supplies or services;
- (c) the painting or decoration of the internal or external face of any building or structure; and
- (d) any operations which are an integral part of or prior to or to render complete the operations described in (a) and (b) above.

Haulage operations include transportation by land, water, or air of persons, or produce of a like nature or ores and minerals, food stuffs and merchandise.

Withholding tax rate for non-resident contractors is 20% and is the final tax.

Where a non-resident contractor has created a permanent establishment in Zambia in accordance with Section 81AA, the payments made to such a person shall not be subjected to a deduction of withholding tax. In this case, the permanent establishment will be required to register with the Zambia Revenue Authority and account for tax either under the normal income tax or the turnover tax system, whichever is applicable.

Management and consultancy fees – section 82A

Section 82A (1)(a) requires every person or partnership making a payment of management or consultancy fees to any person interest to deduct tax from such payment before making any other

deductions, irrespective of whether such payment is made within or outside Zambia, and to account for such tax.

The Income Tax Act defines “management or consultant fee” as a payment in any form, other than an emolument, for or in respect of any creation, design, development, installation and maintenance of any information technology or solution, programme or system, administrative, consultative, managerial, technical, or any other service of a like nature”

The withholding tax rate for management and consultancy fees is 15% for residents and 20% for non-residents and is the final tax.

Interest – section 82A

Section 82A (1) (b) requires every person or partnership making a payment of interest from a source within or deemed, under section 18, to be within Zambia, to deduct tax from such payment before making any other deductions and to account for such tax.

Interest is not defined in the Income Tax Act, but from its ordinary dictionary meaning it is to be taken as an amount calculated according to a fixed ratio on debt or money lent.

Interest can be earned on savings or deposit accounts, treasury bills, government bonds or any other financial instruments, or on debt or money lent.

The withholding tax rate on interest is 15%. However, this is not the final tax. At the end of the charge year, the taxpayer will be required to submit an Income Tax Return containing all sources of income, including income from interest. The final tax will be determined through an assessment. The withholding tax deducted is taken into account before arriving at the final tax.

The withholding tax rate for interest earned on Government Bonds and Treasury Bills by exempt organizations and charities is 15% and it is the final tax in respect of non-residents.

No withholding tax is payable on interest earned by individuals from savings or deposit accounts held with financial institutions such as banks and building societies.

Royalties – section 82A

Section 82A (1) (b) requires every person or partnership making a payment of royalties from a source within or deemed, under section 18, to be within Zambia, to deduct tax from such payment before making any other deductions and to account for such tax.

A royalty is defined in Income Tax Act to mean ‘a payment in any form received as a consideration for the use of, or the right to use, any copy right of literary, artistic, or scientific work (including cinematograph films and tapes for radio or television broadcasting), any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.’

Some examples of Royalties are payments for the rent of cinematograph films whether those films are exhibited in cinemas or television and income from leasing. Payment for the use of equipment under an operating lease also attracts withholding tax.

The Withholding Tax Rate for Royalties is 15% for residents and 20% for non – residents. However, in the case of non – residents, this is the final tax.

Rent – section 82A

Section 82A (1) (c) requires every person or partnership making a payment of rent in respect of real property from a source within or deemed, under section 18, to be within Zambia, to deduct tax from such payment before making any other deductions and to account for such tax. The **tenant of** is therefore responsible for deducting withholding tax from gross rentals payable to the landlord on the date of accrual and should remit the amount so deducted to the Zambia Revenue Authority.

‘Rent’ is defined under section 2 to mean “a payment in any form including a fine, premium or any like amount, made as a consideration for the use or occupation of or the right to use or occupy any real property including personal property directly connected with the use or occupation or the right to use or occupy such real property”.

It is important to note that the property from whose rentals the Withholding Tax is deducted must be situated in Zambia.

The rate of withholding tax is 10%. This is the final tax. The Withholding Tax deducted is taken into account before arriving at the final tax.

Commissions – section 82A

Under section 82A (1)(c), withholding tax is also payable on any commission other than commission received by an individual whose income is from employment or office.

There appears to be no legally accepted definition of commissions with particular reference to tax legislation and in the circumstances recourse may be made to a dictionary definition of the word ‘commissions’.

The Company Oxford English Dictionary defines commissions (in relation to payments) as “...*a sum paid to an agent in a commercial transaction...*”

While the Merriam-Webster Online Dictionary defines commission (in relation to payments) as “...*a fee paid to an agent or employee for transacting a piece of business or performing a service; especially: a percentage of the money received from a total paid to the agent responsible for the business...*”

The definitions both imply an agency relationship exists between the person paying the commission (as principal) and the person receiving the commission (as agent). In addition, under one definition, the fact that the payment is in the nature of a percentage of a total sum is inherent in a commissions.

The withholding tax rate is 15% for residents and 20% for non-residents. The tax is a final tax for non-residents.

Public entertainments fees – section 82A

Under section 82A (1) (d), withholding tax is also deductible from public entertainment fees paid to non-resident entertainers and sportsmen for performances in Zambia. These would include non-resident: singers, musicians, actresses, comedians etc. The responsibility to withhold is on the promoter of the event or any other person responsible for paying such foreign entertainer.

Public Entertainment Fee is defined to mean “a payment in any form other than an emolument to, on behalf of, or in respect of, any person or persons in partnership, including theatre, motion picture, radio or television artists, musicians, athletes or sports persons, in respect of those persons' personal activities in any entertainment, competition or similar activity within the Republic.”

The withholding tax rate is 20% and is the final tax.

Winnings from Gaming, Lotteries and Betting

The Income Tax Act was amended in 2014 to introduce the requirement to deduct withholding tax at the rate of 20% on winnings from gaming, lotteries and betting. All winnings from gaming, lotteries and betting in money or money's worth shall be subject to withholding tax. Examples include winnings from raffle draws, commercial promotions and radio/television promotions or winnings from any other game of chance.

Where the winning is in the form of a service or tangible good (e.g. house, car, holiday package, etc), the tax shall be levied on the value of the service or the good respectively. Below are examples illustrating how the values are to be determined:

Example 1:

Mr. X wins a house worth K250, 000.00 in a promotion. The promoter will deduct and remit withholding tax of K50, 000.00 to Zambia Revenue Authority.

Example 2

Ms. Y wins a holiday package worth K20, 000.00 in accommodation and food, K8, 000.00 air tickets and K2, 000.00 for incidentals. The promoter will account for withholding tax as follows:

Accommodation and Food	K20,000.00
Air Tickets	K 8,000.00
Incidentals	K 2,000.00
Total	K30,000.00

Withholding tax @ 20% K 6,000.00

8.3 EFFECTS OF A DOUBLE TAXATION AGREEMENT ON WITHHOLDING TAX

In certain cases, the payee happens to be in a country which has a Double Taxation Agreement (DTA) with the Republic of Zambia. The payer is required to make an application for a directive from the Commissioner-General to restrict the deduction of tax to the rate specified in the respective Double Taxation Agreement. Before a direction can be given, the Commissioner-General has to be satisfied that conditions as stipulated in the respective DTA are fulfilled.

8.4 DUE DATES

The tax deducted must be remitted to the Zambia Revenue Authority by the 14th of the month following the month in which the deduction was made. For example, withholding tax, which was deducted in the month of January 2016, is due for payment on or before 14th of February 2016.

Payments made after the 14th of the following month will be regarded as late and attract a penalty of 5% of the tax unpaid and is payable for each month, or part thereof, that the tax remains unpaid. In addition, interest is payable at Bank of Zambia discount rate plus 2%.