

NOVEMBER 2005 LEGAL ALERT: **WITHHOLDING TAX IN NIGERIA.**

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MOTIVATIONAL QUOTE.

"If you will succeed, you must drop yesterday's methods, hold loosely to today's methods and try to anticipate tomorrow's challenges."

REACTIONS TO LAST LEGAL ALERT.

Our last Legal Alert was on the very important and vexed issue of the implementation of the new National Health Insurance Scheme. A summary of some of the responses we received, one of which was solicited from one of our friends who is a stakeholder, i.e. Ophthalmologist, of a similar scheme in the United Kingdom, are as follows: -

I. "Our organisation (a major global oil company), has been studying for a couple of months now with an objective of evaluating a most effective form of health care provision for our employees. The challenge for any Health Insurance Scheme is the quality of the healthcare that would eventually reach the beneficiary. Our surveys and studies have shown that this form of healthcare, the level of healthcare that eventually reached the average employee is very poor compared to the commensurate amount expended." The underlined words and the words in brackets were inserted by us.

II. From the Ophthalmologist in the United Kingdom is the view that globally, Nations, especially developing nations, are moving away from Health Insurance Schemes, as presently constituted, because of the sophistication required for its management and delivery, and also because of the huge monetary deficit to the national government, in the United Kingdom for example. Where advanced Nations have not succeeded, would Nigeria lacking in the culture of due process be able to sustain and maintain this Health Scheme?

III. In conclusion, it is agreed by all the Respondents that the attempt by the Nigerian Government is commendable provided that "... the horn is held correctly, else the bull would definitely refuse to be led!"

NOVEMBER 2005 LEGAL ALERT: WITHHOLDING TAX LAW & ITS APPLICATION IN NIGERIA.

INTRODUCTION

The need for government to equitably increase the amount it collects as tax, increase efficiency in tax collection vis-à-vis preventing tax payers from evading the payment of taxes through various smart tax avoidance or tax evasion schemes has led to the introduction of withholding tax in many countries including Nigeria. In the United States for example, Withholding Tax was prominent during the prosecution of the Second World War.

Unfortunately, the escalating business practice in Nigeria of principals awarding contracts at net values without factoring into the contracts withholding tax deductions and payments, or, deducting and not remitting withholding tax payments to the government is to the detriment of any economy. These unwholesome practices are also to the disadvantage of weak contracted companies or individuals who most of the time are not aware of what withholding tax means, how it works and the contractor's rights and benefits under it.

WHAT IS WITHHOLDING TAX?

A withholding tax is the tax required by Law to be withheld by a party from each payment made to another contracting party from the income or services rendered. This tax, when deducted and withheld, is required to be remitted periodically to the Government Inland Revenue Service. The Inland Revenue Service is in turn required to issue a Withholding Tax Credit Note for the benefit of the latter party, part of whose income was withheld.

Withholding tax is not a final tax. As mentioned above, the paying party is required upon withholding and paying this tax to obtain on behalf of the other party a Tax Credit Note. The latter Note automatically becomes a tax credit to the other party from whose income the tax was deducted.

A withholding tax payment, as a tax credit, allows the latter party mentioned above to claim it as part of its tax benefits when filing its year end tax returns.

The applicable Laws on withholding tax in Nigeria are Sections 60, 61, 62 and 63 of the Company Income Tax (CITA) and Sections 69 ? 72 of the Personal Income Tax (PITA)

WITHHOLDING TAX RATES IN NIGERIA.

Except for interest, rent, dividends and directors fees, most withholding tax rates on payments on earned income are assessed at the rate of 10% for corporate bodies and 5% for individuals. The actual rates for most items are shown in the table below:-

Type of Payment	Companies	Individuals
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% %

Dividends	10	10
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Management fees	10	5
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Bond interest, royalties	10	5
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Interest	10	10
Rent	10	10
Royalties	10	5
Consultancy and technical service fees	10	5
Commission	10	5
Construction contracts	5	5
Income from all aspects of building and other civil Works construction	5	5
Income from contracts other than outright sale and Purchase of goods and property in the ordinary course of business	5	5
Directors' fees	10	10
Taxed Nigerian dividend subsequently redistributed by a company	Nil	Nil

In Nigeria, Non resident recipients of income in the form of interest, dividends and royalties, upon deduction of withholding tax, are not liable to further tax payments, under Nigerian law, provided that for the tax year, they remain non-resident. Also in Nigeria, where there is an agency arrangement, it is only the rewarding commission of the Agent that is subject to payment of withholding tax.

PENALTIES FOR LATE OR NON-REMITTANCE OF WITHHOLDING TAX.

All withholding tax liabilities are required to be collected and paid over to the tax authorities within 30 days of their becoming due for payment. Where there is a failure to remit this Tax for whatever reason, the penalty on conviction is a 200% fine of the tax due in addition to commercial rates of interest until the entire amount accessed as withholding tax is fully paid.

ADVANTAGES OF WITHHOLDING TAX.

The Federal Board of Inland Revenue in its Book, "General Tax Guide For Tax Administrators & Practitioners" enumerated the following advantages which we now summarise for your convenience: -

- I This Tax helps to broaden the tax net by bringing otherwise unknown tax payers or tax evaders into the tax net.
- II This Tax prevents tax evasion(s) which are usually disguised in obscure transactions.
- III This Tax makes tax payment less cumbersome for the tax payer who may not have the culture of filing tax returns and making tax payments.
- IV This Tax guarantees regular flow of revenue to the government.

V This Tax is a form of voluntary compliance with tax Laws.

DISADVANTAGES WITH WITHHOLDING TAX ADMINISTRATION.

A. The tax guide does not state any disadvantage. From experience however, the Practical Problems with this tax is the fact that principals in a contract sometimes deduct this tax from the entire contract sum instead of withholding only the required percentage of the income accruing to the contracted party.

B. Also, deductions made are not remitted to the Inland Revenue Service. This unfortunately deprives the contracted party the advantage of claiming tax credits. As the contracted party is usually in a much weaker position, it finds it difficult to insist on its rights.

C. There are also complaints of delays in obtaining the Tax Credit Note from the Inland Revenue Services.

CONCLUSION.

To have a more profitable business, it is recommended that you increase your knowledge in this area, ensure that in pre-contract negotiations and documentation, the payment of this Tax is resolved and that the correct rate is deducted as withholding tax. You should request very nicely for evidence of the payment of this Tax so that you can benefit from the tax credits accruing when your final tax is computed.

BUSINESS DEVELOPMENT NEWS.

After the mandatory requirements of all Banks in Nigeria to have a minimum share capital of N25Billion before the end of December 2005, the next business news item worthy of reporting is the decision of the Standards Organisation of Nigeria (SON) to require all goods imported into Nigeria, as from the 1st day of December 2005, to have a SONCAP Certificate (Standards Organisation of Nigeria Off-Shore Conformity Assessment Programme).

SONCAP implies that before any product can be imported into Nigeria, such a product must be tested and approved by designated agencies/institutions appointed by SON. As further reported by Businessday Newspaper, "Where the product fails the test, the foreign manufacturer is made to effect the necessary rectification to make the product fit for shipment into the country".

As laudable as this programme is in saving Nigeria and Nigerians foreign exchange and ensuring that the quality of the products imported meets approved international standards ? unlike pre-shipment inspection which only ensures that the products imported matches the description on the importation documents ? concerns are being raised as to whether this is not another pre-inspection of goods, too many?

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