

ISO 9001: 2008 CERTIFIED

Practice Note No. 01/2013
Date of Issue: August 2013

**Withholding Tax on Payments of Service Fee to a Resident Person under
Section 83(1) (c) of the Income Tax Act, Cap. 332**

1.0 TAX LAW

This Practice Note is issued under Section 130 of the Income Tax Act, Cap. 332 as amended from time to time.

2.0 PURPOSE

Practice Notes are issued for the purpose of providing guidance for the general public and officers of the Tanzania Revenue Authority in order to achieve consistence in the administration of the tax law, in this case the Income Tax Act, Cap. 332. This practice note is intended to address administrative problems arising from the wide scope of the recently introduced withholding tax on any service fee payable by a resident person to another resident person.

3.0 INTERPRETATION

3.1 In this Practice Note unless the context requires otherwise

“Act” means the Income Tax Act, Cap 332

3.2 Definitions and expressions used in this Practice Note that are used in the Act have, unless the context requires otherwise, the same meaning in the Practice Note as they have in the Act.

4.0 THE APPLICATION OF THIS PRACTICE NOTE

This Practice Note considers:-

- 4.1 Types of services attributable to payment of service fee that are subject to withholding tax under Section 83(1) (c) of the Act
- 4.2 Types of payments to be included in calculating services fees.
- 4.3 Source Rule for the Payments
- 4.4 Application to Particular types of Persons
- 4.5 Calculation of withholding payment amounts
- 4.6 Procedures Applicable to Withholding Tax

5.0 HOW THE LAW APPLIES

5.1 Types of services (activities) attributable to payment of service fee

5.1.1 Withholding Obligations

The tax law requires a resident person who makes payment to another resident or non-resident a service fee with a source in the United Republic to withhold income tax from the payment at the rate specified under Paragraph 4(c) of the First Schedule to the Act. For the purpose of this Practice Note the supply of water and electricity shall be regarded as goods and therefore not subject to withholding obligations under services¹.

5.1.2 Types of Services

5.1.2.1 The payment subject to withholding tax under this Practice Note 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 or consultancy services or other such services of an independent business character** i.e. other than remuneration for employment.

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

5.1.2.2 The services are carried out by the withholdee in conducting the withholdee's business, including an isolated arrangement with a business character.

5.1.2.3 The following payment are excluded:

- i) Exempt amounts from income tax to the extent that may be specified in the Act i.e. either through an Exemption Order or amounts listed in the Second Schedule to the Act,
- ii) Payment in respect of services ancillary to acquisition of goods: payments for services ancillary to and included in the price for goods purchased,
- iii) Payment made by or on behalf of an individual not in conducting business, e.g. payment for entrance into a music show or any entertainment or theatrical activity or football game for an individual or on behalf of an individual, or payment by a clearing and forwarding agent on behalf of an individual for clearance of imported goods for personal use ,

¹ Water and Electricity are not non-transferable which is one of the key attributes of any service

- iv) Payment in respect of services provided by the Government including Government Agencies and Local Authorities related to their statutory functions of the Government, except amounts derived from business activities that are unrelated to the functions of government,
- v) Payment for medical services and for medical services by an employer or on behalf of an employer to a medical service provider,
- vi) Payment made for marketing or auctioneering of agricultural produce,
- vii) Payment for extension services or processing of agricultural products,
- viii) Payment for service fee charged by a bank or a financial institution,
- ix) Payment in respect of insurance premium, insurance agency or brokerage services etc.,
- x) Payment for transport Services, except the commission and fees thereon,
- xi) Payment for general cleaning or sanitation services,
- xii) Payment for transmission of messages by any apparatus by a resident or non-resident person.

5.2 Source of Payment

A service fee payment has a source in the United Republic where the fee is attributable to rendering service:

- (i) In the United Republic , regardless of the place of payment
A payment has a source in the United Republic no matter where the payment is made if the service is rendered in the United Republic. Service is rendered in the United Republic where:
 - a) Either the activities are carried out in the United Republic or:
 - b) The results of the activities are directed to or utilized or benefitted by residents of the United Republic
- (ii) Where the payer is the Government of the United Republic. The Government of the United Republic includes Union Government and Zanzibar Revolutionary Government.

5.3 Application to Particular Types of Persons

5.3.1 The withholding tax deduction applies to payments made by a resident person, including a domestic permanent establishment of a non-resident person, to a resident person.

5.3.2 The tax withholding is non-final when the payment is made to a resident person. The withholder shall be entitled to a tax credit in an amount equal to the tax deducted as paid in the year of income.

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

6.0 CALCULATION OF THE WITHHOLDING PAYMENTS

6.1 Withholding Tax Base

Tax shall be computed on the gross amount paid without deduction of expenses or allowances.

6.2 Exclusion of Value Added Tax (VAT) or Any Other Indirect Tax

The withholding tax base amount shall be exclusive of any value added tax or any other indirect tax included in the payment amount.

Example:

Where a service fee liable for the withholding tax amounting to Shs. 118 million inclusive of VAT was paid the taxable amount shall be Sh. 118 million less Shs. 18 million VAT i.e. Sh. 100 million.

6.3 Inclusion of Value of Benefits and Facilities

Where services are provided and payments are made to the withholder of cash plus provision of benefits and facilities the withholding tax base shall include the amount paid for the benefits or facilities. Where the benefits were not paid for they shall be quantified at market value.

Example:

A resident Music Band was invited by a resident local foundation to perform at its fund raising event. The Band was paid Shs. 50 million. The Foundation paid for the local transport amounting to Shs. 1.5 million and full board accommodation for Shs. 3.2 million exclusive of VAT.

The withholding tax base shall be:

Cash Payment	Shs. 50.0 Million
Local Transport	Shs. 1.5 Million
Accommodation (full board)	<u>Shs. 3.2 Million</u>
Withholding Tax Base	<u>Shs. 54.7 Million</u>

6.4 Exclusion of Value of Goods in the Provision of Services

Where services are provided and payments are made to the withholder for services rendered plus purchases of goods, the withholding tax base shall not include the amount paid for purchases of goods.

Example:

A company receives motor vehicle maintenance services of a mechanic. The mechanic charges the company Shs.1,000,000 million for services provided, of

which Shs. 250,000 are labour charges and Shs. 750,000 for replacement of parts, purchases of lubricating oils and greases.

The withholding tax base amount shall be Shs. 250,000 provided that the values goods is indicated in the invoice. If the value of goods is not indicated the whole of the payment shall be deemed to be the payment in respect of services.

7.0 PROCEDURES APLICABLE TO WITHHOLDING

7.1 Due Date for Payment of Tax

Tax withheld shall be remitted to the Commissioner within seven (7) days after the end of each calendar month in which the tax was withheld.

7.2 Filing of withholding tax statement

Every withholding agent shall file with the Commissioner within thirty (30) days after the end of each six (6) months calendar period a statement in the manner and form prescribed specifying:

- a) Payment made by the withholding agent during the period that is subject to withholding
- b) The name and address of the withholdee
- c) Income tax withheld from each payment; and
- d) Any other information that the Commissioner may prescribe.

7.3 Issuance of Withholding Certificate

A withholding agent shall prepare and serve on a withholdee a certificate setting out the amount of payments made to the withholdee and income tax withheld from those payments. A Withholding Tax Certificate for service fee shall cover a period of one month and shall be served within thirty (30) days after the end of the month.


Rished Bade

Deputy Commissioner General