

Guide to Tax on Payments to Non Residents

Who are “non-residents” to which withholding taxes apply?

Withholding taxes are only required to be deducted from certain payments to persons or organisations that are defined as “**non-residents**” for tax purposes and who are not exempt from income tax.

The definition of “non-resident” in Chapter 2 Part 2 of the Revenue Act 2016 does NOT cover all persons or organisations who are based in a foreign country. In the case of individuals, It does not apply to persons who:

- have a permanent home in Somaliland; or
- are present in Somaliland –
 - for a period of, or periods amounting in aggregate to, 183 days or more in any 12-month period that commences or ends during the year;
 - during the year and in each of the two (2) preceding years for periods averaging more than 122 days in each such year; or
- are employees or officials of the Government of Somaliland posted abroad during the year

In the case of companies, the definition of non-resident does not apply if they:

- are incorporated or formed under the laws of Somaliland; or
- have their management and control exercised in Somaliland at any time during the year; or
- undertake the majority of their operations in Somaliland during the year

In the case of other organisations – see the definitions in the Revenue Act (sections 62 to 64) of resident trust, resident partnership and resident retirement fund.

Which non-residents are exempt from income tax (withholding tax not required to be deducted)?

Non-residents are exempt from income tax if they are specifically exempted under the provisions of the Revenue Act or under a special agreement (such as the United Nations Charter, the Geneva Convention or other special agreement signed by the President of Somaliland). Sec 72 of the Revenue Act exempts the following payments from income tax:

- the income of any organization or person entitled to privileges under the Somaliland law on diplomatic privileges
- the official employment income derived by a person in the public service of the government of a foreign country (provided the income is payable from the public funds of that country and is subject to tax in that country);
- any allowance payable outside Somaliland to a person working in a Somaliland foreign mission;
- employment income derived by an individual to the extent provided for in a technical assistance agreement.

Which types of payment to non-residents are subject to withholding tax?

The following payments are subject to withholding tax:

- Payments of dividends, royalties, rent, natural resource payments & management charges as per sec 129 of Revenue Act, 2016
- Payments to public entertainers and sportspersons as per sec 130 of Revenue Act

- Payments to contractors or professionals under a Somaliland-source service contract, other than an employment contract, as per sec 131 of Revenue Act.

Income will be regarded as being derived from a Somaliland-source service contract rather than an employment contract where:

- the person providing services is entitled to subcontract or delegate the work the person has agreed to perform; or
- the person provides all or most of the equipment, tools or assets required to perform the work; or
- the person is not reimbursed by, or does not receive an allowance from, the person who pays for the performance of work if the individual person provides all or most of the equipment, tools or assets required to perform the work; or
- the person assumes any commercial risk, and the extent of that risk, when performing the work, including being legally responsible for the work and assuming liability for the cost of rectifying any defect in the work; or
- the person has any freedom in the way the work is performed, subject to any specific terms in the contract or agreement concerning the performance of the work; or
- the person is operating a business independently of the person who pays for the performance of the work, including if the person performs services as specified in the contract or agreement; and is free to accept or refuse additional work.

Non-resident individuals who receive payments for services under an employment contract are not subject to the 10% withholding tax on non-residents, but are subject to employment income tax (payroll tax) withholding of 6% (5% withholding plus 1% stamp tax).

What is the tax rate on withholding of payments to non-residents?

Payments to non-residents are subject to withholding tax of 10% on gross amounts payable. Stamp tax of 2.5% of the amount withheld is also required to be withheld, giving an effective rate of withholding of 10.25%.

How do you calculate withholding tax on payments to non-residents?

Example: Suppose that Company X has contracted to pay US \$1000 to an international expert (who is a non-resident for tax purposes) for professional services provided where that expert is not an employee and is due to make that payment in March 2019

Calculation

- Withholding agent: Company X
- Withholding tax return filing due date 15th April
- Withholding tax payment due date 15th April
- Gross amount payable to non-resident: 1000 US dollars
- 10% WHT to be deducted = $1000 \times 10\% = 100$ US dollars
- 2.5% stamp tax to be deducted from the payment = $100 \times 2.5\% = 2.5$ US dollars
- Net amount to be paid to non-resident 897.50 US dollars

Who is a withholding agent?

“Withholding agents” are persons obliged to withhold tax under the Revenue Act 2016. They are individuals or organisations who make payments to “non-residents”.

Where can withholding agents get a Form 06 Monthly Withholding Tax return form in respect of payments to non-residents?

Withholding tax (WHT) forms and guidelines for their completion are available from any IRD office, or can be downloaded from the Ministry of Finance Development website (<http://somalilandmof.org>)

When do withholding agents have to pay withholding tax on payments to non-residents?

Those who make payments to non-residents (withholding agents) should complete and submit a Form 06 Monthly Withholding Tax return and make payment to their IRD Office within 15 days of the following month in respect of payments made to non-residents during the previous month.

Where do withholding agents have to pay withholding tax on payments to non-residents?

Withholding agents should pay withheld tax to the Inland Revenue Department cashier office where their business or office is located and registered for tax purposes.

What if a withholding agent files a withholding tax return late or fails to file a return?

A withholding agent who fails to file a monthly withholding tax return within fifteen (15) days of the following month of payment is liable to pay penal tax of two (2) percent of the tax payable for that month or US \$100 per month, whichever is the greater, for each month or part month during the period from the day after the return was due to be delivered to the day the return was delivered. Withholding agents may also be convicted of an offence under sec 17 of the Revenue Act and be liable to a fine of up to US \$1,500.

What if a withholding agent pays withholding tax late or fails to pay withholding tax deducted?

Failure to pay any tax withheld or required to be withheld by a withholding agent from a payment to another person, on or before the due date for payment is liable for late payment fees equal to two percent (2%) per month of the amount unpaid calculated from the date on which the payment was due until the date on which payment is made. Unpaid withholding tax can also be claimed as a personal liability of the withholding agent under sec 149 of the Revenue Act with withholding agents able to recover payments made by them from the non-resident.

What other obligations do withholding agents have where withholding tax is deducted from payments made to non-residents?

In addition to filing the Form 06 monthly withholding tax return and making payment to IRD, withholding agents are also required to provide non-residents with a certificate showing the gross amount payable to the non-resident, withholding tax (and stamp tax) withheld, and the net amount paid (sec 150(3) of the Revenue Act). Certificates give non-residents a record of tax deducted on their behalf by the withholding agent. The format of the certificate is part of Form 06 and the guidelines for its completion.

Withholding agents should add certificate numbers on certificates issued so that they can be tracked and details recorded on the Appendix/Schedule that forms part of Form 06. Only one certificate is required to be provided in respect of all withholding tax deductions made from payments to each non-resident each year.

Withholding agents are also required to retain records of withholding tax deductions made for a period of 5 years after the end of the year to which they relate (sec 150(2) of Revenue Act)