



# **ZAMBIA REVENUE AUTHORITY**

## **DIRECT TAXES DIVISION**

### **PRACTICE NOTE NO. 2/98**

**WITHHOLDING TAX DEDUCTION OF TAX FORM**

**NON RESIDENT CONTRACTORS**

**(Explanatory Notes to Payers)**

**INCOME TAX (AMENDMENT) ACT 1998**

**SECTION 81A**

# **WITHHOLDING TAX DEDUCTION OF TAX FROM NON RESIDENT CONTRACTORS**

## **(Explanatory notes to Payers)**

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## **GENERAL:**

### **This Practice Note:**

- (a) Outlines the Zambia Revenue Authority's powers and practice in relation to the provisions of Section 81A;
- (b) is not exhaustive and should not be regarded as creating or precluding any statutory rights or any discretionary treatment other than those contained in the Act; and
- (c) is not an authoritative interpretation of the law and cannot be held to bind the Zambia Revenue Authority in any particular case.

## **COMMISSIONER -GENERAL**

## 1. INTRODUCTION:

The Income Tax (Amendment) Act, No 9 of 1998 has introduced Section 81A which provides for the deduction of withholding tax from payments made to non-resident contractors who are engaged in construction and haulage operations. The requirement to deduct withholding tax is effective from 1st April 1998.

A withholding tax is deductible by the person liable to make the payment (the payer) when payment is actually made to the person to whom it is due (the payee)

## 2. SCOPE OF SECTION 81A

With effect from 1<sup>st</sup> April, 1998, all persons or partnerships making payments to non resident contractors who are engaged in construction or haulage operations, will be required to deduct withholding tax at the rate of 15%. The deductions are to be made from the gross payments before any other deductions whatsoever.

## 3. DEFINITIONS:

For the purpose of guidance, the following are the words and phrases used and their meanings:

### (a) "Non-resident Contractor" means –

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

### (b) A Partnership is "not resident in Zambia"-

If all or the majority of the partners are not resident or ordinarily resident in Zambia.

## **"Permanent establishment"**

Permanent establishment is ultimately a matter for the courts to decide but that the Zambia Revenue Authority will construe it as meaning-

"A fixed place of business, through which the business of the contractor is wholly or partly carried on, and includes a place of Management, a branch, an office, a factory a workshop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months for the purpose of the contractors enterprise."

- (d) "Construction operations" include-
- (i) the erection, alteration, maintenance, repair, extension, demolition or cleaning of any building or structure, whether permanent or not;
  - (ii) 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;
  - (iii) the painting or decorating of the internal or external face of any building or structure and
  - (iv) any operations which are an integral part of or prior to or to render complete the operations described in paragraphs (i) and (iii) above

The operations particularly included are those performed by:

Bricklayers	Heating and lighting Engineers
Builders	Lift Engineers
Carpenters	Painters and Decorators
Civil Engineers;	Piling Contractors
Drillers and Borers	Plumbers
Electrical Engineers	Refuse Disposal Contractors

Electricians	Sanitary Engineers
Engineering Consultants;	Service Engineers
Excavators	Steel Erectors
Fencing Contractors	Welders
Flooring Contractors	Architects
Glaziers	Surveyors

All trades or professions including one or more of the preceding or similar trades or professions.

(e) **Haulage operations:**

Haulage operations are defined in the Act as including the transportation by land, water or air of persons, livestock or any goods, whatsoever including farm produce, or produce of a like nature, or ores and minerals, food stuffs and merchandise.

In particular, they include those operations carried on by persons or persons in partnership who are in business as:

Air Charter Services \*Omnibus Companies  
Car Hire businesses            Removal Contractors  
Haulage Contractors

All business including one or more of the preceding or similar businesses.

\* This category **ARE NOT CONTRACTORS** in respect of normal fare paying passengers.

(f) **Date of Accrual: -**

The date of accrual means the date on which a non resident contractor is legally entitled to claim payment from the Payer whether or not it is actually paid.

(g) **"Date of Payment "**

The date of payment is the actual date on which payment is made irrespective of the date of accrual.

**For example**

Payment K5,000,000 to be paid on 10th July, 1999  
Advance of K5,000,000 made on 1st May 1998.

Date of accrual of K5,000,000. 10th July, 1998  
Date of Payment of K5,000,000 1st May 1998.

(h) **"Amount Payable:"**

The amount payable which is liable to deduction of withholding tax is the amount before any other deductions whatsoever.

(i) **"Payer"**

A Payer is any person or persons on partnership who are required by law, to deduct tax from payments made to non-resident Contractors.

(j) **"Returns:"**

The returns are the returns of tax deducted (Form CF 18IA) and the relative certificates of deduction (form CF81A).

3. **FORMS IN USE:**

The forms provided in connection with withholding tax from non- resident contractors are:

**"FORM CF 81A: Certificate of deduction:"**

The form (CF 81A) is to be completed by the Payer in respect of each payment to a non -resident contractor.

This form (CF 81A) is to be used to summarise all payments made to and tax deducted from non- resident contractors during a calendar month and is to be certified by the Payer. The bottom portion provides a remittance advice for the Payer in respect of the payment of tax due in accordance with the return.

Forms (CF 81A) and copies of this Practice Note are available from all Zambia Revenue Authority, Direct Taxes Division Offices and the Advice Centre, in Lusaka.

5. **DEDUCTION OF TAX:**

Tax is to be deducted from every payment made to a non-resident contractor at the date of the payment. The deduction must be made from the gross payment before any other deduction whatsoever.

## 6. **EXEMPT NON RESIDENT CONTRACTORS:**

The provisions of Section 81A will not apply in the following cases:

- (a) Where the non-resident contractor has a permanent establishment in Zambia;
- (b) In certain cases a Double Taxation Agreement (DTA) between Zambia and the country of residence of the contractor may override the obligation to deduct Withholding Tax. A list of countries with which Zambia has entered Double Taxation Agreement may be found in Appendix A. If it is considered the DTA operates in this way authority to make payments gross must be obtained, by way of a direction, from Zambia Revenue Authority's Head Office in Lusaka.

In any of the cases listed above, the payer should make payment without deduction of tax. In cases of doubt, the nearest Direct Taxes Office should be contacted for advice.

## 7. **PREPARATION OF CERTIFICATES OF DEDUCTION:**

Whenever a payment is made to a non -resident contractor, a Certificate on form (CF 81A) is to be prepared in duplicate showing:

- (a) Name and Address of the non-resident contractor;
- (b) Date of accrual of the amount payable;
- (c) Actual date of payment;
- (d) Amount of the gross payment;
- (e) Tax deducted there from; and
- (f) Amount of the net payment.

The certificate is to be dated and signed by:

- (a) The Secretary or a Director in the case of a limited company;
  - (b) A partner in the case of a partnership; or
  - (c) The person himself where he is not in partnership;
- The capacity of the signatory is to be shown, For Example Secretary, Partner, Director etc.



The original of the certificate is to be given to the non resident contractor and the duplicate retained for submission to the Direct Taxes Division, Collection Office with the monthly return as described in paragraphs 9 and 10, below.

**8. PREPARATION OF RETURN OF TAX DEDUCTED:**

Immediately after the last day of each calendar month, details of all certificates as in paragraph 6 are to be entered on the reverse of the return of tax deducted (Form CF I8IA). The columns are to be totalled and carried to the front of the form. The declaration is then to be dated and signed.

**9. SUBMISSION OF RETURNS:**

On or by 14th of the month following the month of deduction, the returns and certificates prepared as in paragraph 7 and 8 are to be sent by the Payer to the Zambia Revenue Authority, Direct Taxes Division.

**10. PAYMENT OF TAX:**

The remittance advice ( form CF I8IA) at the bottom of the Return of tax deducted is to be completed and a remittance of the tax deducted sent with the return as in paragraph 9 above.

**11. PENALTIES FOR LATE PAYMENT:**

A penalty of 5% per month plus interest at the published Bank of Zambia discount rate plus 2% will be charged on any amount which remains unpaid after the due date.

**12. ENQUIRIES:**

Further Inquiries maybe be made at the nearest office of the Zambia Revenue Authority, Direct Taxes Division or the Advice Centre in Lusaka.

## **APPENDIX A**

### **DOUBLE TAXATION TREATIES:**

Zambia has tax treaties with several countries. These treaties, or agreements, eliminate double taxation for people who would otherwise have to pay tax in two countries on the same income.